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Environmental Protection Agency – Region 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Willamette Riverkeeper

(b) County of Residence of First Listed Plaintiff Lane
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Elisabeth Holmes, Willamette Riverkeeper, P.O. Box 293,
Eugene, Oregon 97440, Tel. (541) 870-7722 and see attached sheet

DEFENDANTS

City of Albany and Peter Troedsson

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

33 U.S.C. § 1251 et seq. (Clean Water Act)

Brief description of cause:

Citizen suit for violations of the Clean Water Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/13/2020

/s/ Elisabeth Holmes, OSB No. 120254

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Civil Action Cover Sheet Attachment Form JS 44

*Willamette Riverkeeper,
Plaintiff*

v.

*City of Albany, Oregon; Albany City Manager Peter Troedsson,
Individually and in his Capacity as City Manager,
Defendants.*

I.(c) Attorneys (Firm Name, Address, and Telephone Number)

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Emails: telegin@bnd-law.com and griefen@bnd-law.com
* *Pro hac* application to be filed promptly

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

WILLAMETTE RIVERKEEPER, an
Oregon non-profit corporation,
Plaintiff,

vs.

CITY OF ALBANY, OREGON; ALBANY
CITY MANAGER PETER TROEDSSON,
INDIVIDUALLY AND IN HIS
CAPACITY AS CITY MANAGER,
Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

(Clean Water Act, 33 U.S.C. § 1251 *et seq.*)

STATEMENT OF THE CASE

1. This action is a citizen suit brought under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, by Plaintiff Willamette Riverkeeper against the City of Albany, Oregon and Albany City Manager Peter Troedsson, individually and in his capacity as City Manager (collectively the "City" or "Defendants") to address violations of effluent standards and

limitations including unpermitted pollutant discharges from the City's small municipal separate storm sewer system ("MS4") and sanitary sewer system, located at approximately River Miles 117 to 120 on the Willamette River.

2. The City's population exceeds 50,000 persons as determined by the 2010 decennial census, thereby requiring the City to apply for, obtain, and comply with the terms and conditions of Oregon's November 30, 2018 National Pollution Discharge Elimination System ("NPDES") MS4 Phase II General Permit (hereinafter the "MS4 General Permit"), or an Individual NPDES permit that covers discharges from its separated storm sewer system.
3. The City's refusal to apply for, obtain, and comply with the terms and conditions of either the MS4 General Permit or an Individual NPDES permit for the City's MS4 system has resulted in unpermitted (and therefore illegal) discharges of pollutants to waters of the United States.
4. The City has not developed and/or implemented a Stormwater Management Program with six minimum control measures as is required by the U.S. EPA regulations for MS4 systems.
5. The City has old, antiquated, abandoned, unidentified, and/or undersized waste discharge system pipes which leak and cause unpermitted sewer overflows.
6. The City is discharging and adding pollutants including raw sewage, bacteria, and other pollutants into waters of the United States, including the Willamette River, or its tributaries, forks, and/or connected waters.
7. The City has added, is adding, and is likely to continue to add unpermitted overflow in excess of the emergency overflow limits set by, and during conditions not authorized by, the City's November 20, 2000 NPDES Waste Discharge Permit No. 102024 (the "NPDES

Waste Discharge Permit”) into waters of the United States, including the Willamette River, or its tributaries, forks, and/or connected waters.

8. The City’s NPDES Waste Discharge Permit has been administratively extended for nearly twenty years.
9. Waters of the United States adjacent or in close proximity to waste and stormwater pipes and outfalls that the City owns, operates, or controls receive the City’s waste and unpermitted stormwater.
10. Any addition of any pollutant from the City’s MS4 system, its old, antiquated pipes, and emergency overflow outfalls (collectively hereinafter, the “discharges” or “additions”) is not permitted under the Clean Water Act unless authorized by a NPDES permit. 33 U.S.C. § 1362(12); 33 U.S.C. § 1311(a); 33 U.S.C. § 1342.
11. The discharges alleged herein are not authorized by the MS4 General Permit, an Individual Permit covering the City’s MS4 system, or the City’s NPDES Waste Discharge Permit.
12. Each discharge violates 33 U.S.C. § 1311 and 33 U.S.C. § 1342.
13. Unless the Court grants Plaintiff’s requested relief, the City will continue to violate the Clean Water Act by discharging, from point sources, unpermitted stormwater, raw sewage, bacteria, and other pollutants, and excessive unpermitted overflows, into waters of the United States.
14. Accordingly, Willamette Riverkeeper seeks declaratory judgment, injunctive relief, civil penalties, and an award of costs, including attorney and expert fees and other expenses incurred in bringing this action. 33 U.S.C. § 1365(d).

JURISDICTION

15. This Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 33 U.S.C. § 1365(a) and 28 U.S.C. § 1331 (federal question). The relief requested is authorized pursuant to 33 U.S.C. §§ 1319, 1365(a), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
16. In compliance with 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135, on August 27, 2019, Willamette Riverkeeper gave its first notice of violations and of Willamette Riverkeeper's intent to file suit to Defendants, the Administrator of the U.S. Environmental Protection Agency ("EPA"), the Region 10 Administrator of the EPA, and the Director of the Department of Environmental Quality of the State of Oregon ("Oregon DEQ") (the "First Notice"). A true and correct copy of the First Notice and its attachments is attached hereto as Attachment A and all details and allegations contained therein are incorporated by reference in this Complaint.
17. In compliance with 33 U.S.C. § 1365(b)(1) and 40 C.F.R. § 135, on January 31, 2020, Willamette Riverkeeper gave a second notice of additional violations alleged in this Complaint and of its intent to file suit to Defendants, the EPA, the Region 10 Administrator of the EPA, and the Oregon DEQ (the "Second Notice"). A true and correct copy of the Second Notice and its attachments is attached hereto as Attachment B. All details and allegations contained therein are incorporated by reference in this Complaint.
18. More than sixty days have passed since the Plaintiff mailed Defendants the First and Second Notices (collectively, the "Notice Letters"). The Clean Water Act violations complained of in the Notice Letters are of a continuing nature, ongoing, or reasonably likely to re-occur.

19. Defendants remain in ongoing and continuous violation of the Clean Water Act.
20. As of the filing of this Complaint, neither the EPA nor the Oregon DEQ has commenced or is diligently prosecuting an enforcement action to redress the violations alleged herein.
21. Willamette Riverkeeper both resides and maintains its principal places of business in the District of Oregon. Willamette Riverkeeper maintains two offices in Oregon, located at 403 Southeast Caruthers Street, #101, Portland, Oregon 97214, and at 454 Willamette Street, Eugene, Oregon 97401.
22. This action reflects an actual, present, and justiciable controversy between the parties.
23. Willamette Riverkeeper's interests and the interests of its members and supporters will be adversely affected and irreparably injured if the City continues to violate the Clean Water Act as alleged herein.
24. The requested relief will redress the actual, concrete injuries to Willamette Riverkeeper and its members and supporters caused by the City's failure to comply with duties mandated by the Clean Water Act, associated regulations, Oregon DEQ's municipal separate storm sewer system MS4 General Permit or Individual Permit terms and conditions, the Oregon DEQ NPDES Waste Discharge Permit terms and conditions, and Oregon's Water Pollution Control Laws.

VENUE

25. Venue is proper in this Court pursuant to 33 U.S.C § 1365(c)(1), because the City's municipal separate storm sewer system and sanitary sewer system and the Clean Water Act violations that are the subject of this Complaint are located in Oregon.
26. The source of the violations is located in the City of Albany, Linn County, Oregon, thus assignment to the Eugene Division is proper pursuant to LR 3-2(a)(3).

PARTIES

Plaintiff Willamette Riverkeeper

27. Plaintiff Willamette Riverkeeper is an Oregon non-profit corporation incorporated and headquartered in Portland, Oregon, with a regional office located in Eugene, Oregon. Willamette Riverkeeper has seven staff members. Willamette Riverkeeper has approximately 3,000 members, and nearly 4,000 additional supporters throughout the State of Oregon, including members and supporters in the City. Willamette Riverkeeper brings this action on behalf of itself and its affected members and supporters.
28. Willamette Riverkeeper was founded in 1996, and serves as the eyes, ears, and voice of the Willamette River (the "Willamette River" or "the river"). For more than 20 years, the organization's sole mission has been to protect and restore the Willamette River's water quality, habitat, and the resources of the Willamette River basin. Willamette Riverkeeper's work focuses on the health of the river's natural ecosystem, which is inseparable from the quality of life of the river's community, including many members and supporters of Willamette Riverkeeper, who live, work, and recreate in the river, its tributaries and side channels, and its surrounding watersheds (including the stretch of Willamette River at issue in this case). Willamette Riverkeeper believes that a river with good water quality and abundant natural habitat, safe for fishing and swimming, is a basic public right. Willamette Riverkeeper engages in public outreach and education, advocacy with agencies, agency administrative processes, habitat restoration, Superfund cleanup, Clean Water Act compliance, and where necessary, litigation.
29. Willamette Riverkeeper organizes numerous paddle events throughout the year to facilitate public access to, and appreciation for, the river, its ecosystem, and its health. Since 2001,

Willamette Riverkeeper hosts an 80 to 90 mile five-day Willamette River trip along the National Water Trail called "Paddle Oregon." Willamette Riverkeeper hosts a two-day "Pinot Paddle" to educate members, supporters, and the public about the perfect balance of temperature, humidity, soil, and river ecosystem necessary to one of Oregon's premier wine-growing regions along the Willamette River. Annually, Willamette Riverkeeper hosts "The Great Willamette Clean Up" event across the length of the entire river. Throughout the year, Willamette Riverkeeper hosts several other trips, for example, day-long Willamette Greenway Paddle Trips, Paddle & Weed Pull Trips, Summer Solstice Paddles, and its River Guardians Program regularly cleans up the river through "Trashy Tuesdays" and "Trashy Thursdays" events in Portland, Corvallis, and Eugene. Even this year with the Covid-19 pandemic, Willamette Riverkeeper is continuing to conduct socially-distanced river clean-ups, led a small week-long 187-mile paddle of the entire length of the Willamette River, and the organization's staff continues to monitor river conservation and restoration projects in the field.

30. In 2016, Willamette Riverkeeper won Travel Oregon's Gene Leo Memorial Sustainable Tourism Award at the Oregon Travel and Tourism Industry Achievement Awards. In 2019, Willamette Riverkeeper won the Oregon Parks and Recreation Association Volunteer Service Award for contributing to protecting and restoring the river.
31. The environmental, health, aesthetic, and recreational interests of Willamette Riverkeeper and its members and supporters have been, are being, and will be adversely affected by the City's illegal operation of its small municipal storm sewer system, pollutant discharges, and unpermitted sewer overflows into waters of the U.S. from its antiquated and improperly maintained sewer system.

32. Willamette Riverkeeper members and supporters reside, work, and recreate in, next to, and around the Willamette River and the Willamette River Basin, including the near where the City illegally operates its small municipal storm sewer system, the City's old, antiquated pipes discharge pollutants, and unpermitted overflows occur.
33. Willamette Riverkeeper members and supporters live and recreate in the river and its vicinity, through activities including but not limited to paddling, boating, swimming, fishing, nature walking, hiking, photography, birdwatching, observing wildlife, hunting, and plant identification; they have aesthetic and health interests in the health and restoration of the waters impacted by the City's unpermitted discharges and overflows.
34. On August 12–16, 2019, approximately 155 paddlers and 30 paddle leaders joined in Willamette Riverkeeper's annual "Paddle Oregon" five-day paddle trip along the Willamette River National Water Trail from Marshall Island Access in Junction City, Oregon and ending at Wallace Marine Park in Salem, Oregon. On August 14, 2019, Paddle Oregon paddlers camped overnight at a pre-reserved spot at the City's Bryant Park, on the banks of the Willamette River. Paddle Oregon paddlers have camped at Bryant Park for several years. On the morning of August 15, 2019, Paddle Oregon's 185 paddlers left camp and began their scheduled 18-mile paddle down river to Independence, Oregon.
35. Less than two miles into their August 15, 2019 paddle, Paddle Oregon paddlers went right through the City's ongoing August 15, 2019 estimated 2,100 gallon raw sewage discharge to the Willamette River, from a location identified on the City's August 20, 2019 Sanitary Sewer Overflow Report as "Abandoned sewer line near Bowman Park," located near 1905 Linn Avenue, Albany, Oregon.

36. Unaware and unnotified of the raw sewage discharge, Paddle Oregon paddlers paddled through the City's raw sewage discharge, and swam in the river the morning of the discharge. The same morning, Willamette Riverkeeper's Executive Director snorkeled in the river, immersing his face and head in the water looking for freshwater mussels.
37. Willamette Riverkeeper also learned that the City has refused to apply for, obtain, and comply with a small municipal separate storm sewer General Permit or an Individual NPDES Permit for its MS4 system. Without a MS4 General Permit or an Individual NPDES Permit for its MS4 system, the City impermissibly discharges municipal stormwater to the Willamette River.
38. Willamette Riverkeeper brings this action on its own behalf and on behalf of its adversely affected members and supporters. Willamette Riverkeeper is a "citizen" within the meaning of 33 U.S.C. § 1365(g).

**Defendants City of Albany and
Albany City Manager Peter Troedsson, Individually and in his Official Capacity**

39. Defendant City of Albany and Defendant Peter Troedsson are the officials with responsibility for the actions and inactions challenged in this Complaint (collectively, the "City" or "Albany").
40. Albany is a "municipality" within the meaning of 33 U.S.C. § 1362(4) because it is a city having jurisdiction over disposal of sewage, industrial wastes, stormwater, and other wastes, and the City is a "person" within the meaning of 33 U.S.C. § 1362(5) because it is a political subdivision of the State of Oregon.
41. Defendant Peter Troedsson is the City Manager for the City of Albany. Defendant Peter Troedsson holds the public office of City Manager and serves in his official capacity as a public body. 33 U.S.C. § 1362(4).

LEGAL FRAMEWORK

The Clean Water Act and Unpermitted Discharges

42. The Clean Water Act is the principal federal statute enacted to protect the quality of the Nation's surface water resources. Under the Clean Water Act, the United States has committed itself "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," including establishing a "national goal that the discharge of pollutants into the navigable waters be eliminated by 1985" 33 U.S.C. § 1251(a).
43. The Clean Water Act prohibits the addition of any pollutant from any point source into waters of the United States, except as authorized pursuant to certain enumerated sections of the Clean Water Act, and in compliance with these provisions, including the National Pollution Discharge Elimination System ("NPDES") permitting program. 33 U.S.C. § 1311(a); 33 U.S.C. § 1342(a); 40 C.F.R. § 122.1; *see also* ORS 468B.050(1)(c) (NPDES permittee may not "[i]ncrease in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.").
44. The Clean Water Act defines the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source" 33 U.S.C. § 1362(12).
45. The Clean Water Act defines "navigable waters" as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
46. Under the Clean Water Act, the term "pollutant" includes, among other things, solid waste, sewage, garbage, sewage sludge, chemical materials, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial and municipal waste discharged into water. 33 U.S.C. § 1362(6).

47. The Clean Water Act broadly defines a "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).
48. Under the Clean Water Act, stormwater conveyances and pipes, sewer lines and emergency overflow pipes, whether active or abandoned or properly or improperly sized, are "point sources" under the Clean Water Act. 33 U.S.C. § 1362(14) ("any pipe").
49. Unless done pursuant to and in strict compliance with a NPDES permit, the addition of any pollutant by any person, from or through a point source, into waters of the United States, is prohibited under the Clean Water Act.
50. Discharges prohibited by the Clean Water Act that are ongoing and likely to continue are ongoing violations of the Clean Water Act.
51. At all relevant times, the State of Oregon has been authorized by the United States Environmental Protection Agency to implement the NPDES permit program for discharges into navigable waters within its jurisdiction pursuant to 33 U.S.C. § 1342(b).
52. The Clean Water Act authorizes any citizen to commence a civil action against any person who is alleged to be in violation of an "effluent standard or limitation." 33 U.S.C. § 1365(a). The Clean Water Act defines "effluent standard or limitation" as including various specified sections of the Clean Water Act as well as provisions of NPDES permits. 33 U.S.C. § 1365(f).
53. Pursuant to the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.2, 19.4, each separate violation of the Act subjects the City to a civil penalty of up to \$55,800 per day, per violation.

Oregon Water Pollution Control Laws and the Willamette River

54. Under Oregon's Water Pollution Control laws, unless a discharge is authorized by a permit, no person shall "cause pollution of any waters of the state," or "discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established for such waters by the Environmental Quality Commission." ORS 468B.025(1)(a), (b).
55. Oregon's water pollution control policy provides that "no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters." ORS 468B.015(3).
56. In Oregon "'pollution' means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any water of the state that either by itself or in connection with any other substance present can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wildlife, fish, other aquatic life or the habitat thereof." OAR 340-041-002(45).
57. The Willamette River and its tributaries are state resource waters with several designated beneficial uses. ORS 536.3001(1); OAR 340-041-0002(17).
58. Oregon has statewide narrative water quality criteria (OAR 340-041-0007) and water quality standards for specific pollutants. *See, e.g.*, OAR 340-041-0009 (bacteria), 340-041-0011 (biocriteria), 340-041-0016 (dissolved oxygen), 340-041-0019 (nuisance

phytoplankton growth), 340-04100021 (pH), 340-041-0028 (temperature), 340-041-0031 (total dissolved gas), 340-041-0032 (total dissolved solids), 340-041-0033 (toxic substances), and 340-041-0036 (turbidity).

Small Municipal Separate Storm Sewer (“MS4”) Systems under the Clean Water Act

59. EPA has regulated MS4s since 1994. 40 C.F.R. § 122.26.
60. The purpose of EPA’s stormwater program is to designate “additional sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources.” 40 C.F.R. § 122.30(b).
61. EPA’s MS4 regulations differentiate between small, medium, and large population municipalities. 40 C.F.R. § 122.26(b)(4) (large MS4s), (7) (medium MS4s), (16) (small MS4s). Municipalities with a separate storm sewer system located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, which are not large or medium MS4s, are small MS4s. 40 C.F.R. § 122.32(a)(1).
62. EPA finalized regulations for “Phase II” of its stormwater program in 1999 (64 Fed. Reg. 68722 (Dec. 8, 1999)), requiring controls on stormwater discharges from small municipal stormwater systems. 40 C.F.R. § 122.34; 64 Fed. Reg. 68722 (effective Feb. 7, 2000).
63. As of February 7, 2000, operators of regulated small MS4s “must seek coverage under a NPDES permit issued by your NPDES permitting authority.... [o]therwise your NPDES permitting authority is the EPA Regional Office.” Oregon DEQ is authorized by EPA to administer the MS4 permit program in Oregon. 33 U.S.C. § 1342(b); OAR 468B.050(1).
64. On November 30, 2018 the Oregon DEQ, Oregon Environmental Quality Commission (EQC) issued a NPDES General Permit for Municipal Separate Storm Sewer Systems, Phase II General Permit (“Oregon MS4 General Permit”).

65. Prior to the issuance of the Oregon MS4 General Permit on November 30, 2018, and since that time, Oregon has made individual MS4 Phase II NPDES permits an option for all permit registrants. Oregon DEQ Response to Comment at 23–24 (Nov. 30, 2018); 40 C.F.R. § 122.33 (permit coverage available under an individual permit tailored to the site-specific characteristics of the system).
66. Small municipal separate storm sewer systems are required to obtain NPDES permit coverage for their stormwater discharges, pursuant to the statutory mandate set forth under the Clean Water Act and its implementing regulations. 33 U.S.C. § 1342(p)(6) and 40 C.F.R. § 122.30–.37.
67. A “municipal separate storm sewer” is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), (i) owned or operated by a public body created by or pursuant to State law having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, (ii) designed or used for collecting or conveying stormwater, (iii) which is not a combined sewer, and (iv) which is not part of a Publicly Owned Treatment Works. 40 C.F.R. § 122.26(b)(8).
68. “Small municipal separate storm sewer systems” are defined in pertinent part as separate storm sewers that are (i) owned or operated by a public body created by or pursuant to State law having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, and (ii) not defined as large or medium municipal separate storm sewer systems or designated by the EPA as contributing to a violation of a water quality standard or pollutants to waters of the United States. Small municipal separate storm sewer systems include systems similar to separate storm sewer systems in municipalities, such as systems

at military bases, large hospital or prison complexes, and highways and other thoroughfares. 40 C.F.R. § 122.26(b)(16).

69. “Small” municipal stormwater systems are those serving a population of 50,000 people or more as determined by census data and whether a municipality is located in an urbanized area. EPA, Stormwater Phase II Final Rule Fact Sheet 2.1 (EPA 833-F-00-003) Jan. 2000 (rev. June 2012); 40 C.F.R. § 122.32(a).
70. Phase II municipalities may only discharge stormwater to surface waters pursuant to, and in compliance with the terms and conditions of, a NPDES permit and must develop a Stormwater Management Program that includes six minimum control measures. 40 C.F.R. § 122.34(b)(1)–(6).
71. Oregon requires reductions in the discharges of pollutants from stormwater, and that permit registrants “not caus[e] or contribut[e] to an excursion [sic] of the applicable water quality standards as established in OAR 340-041.” Oregon MS4 General Permit at 8.
72. The Oregon MS4 General Permit lists the City of Albany as a “New Registrant” subject to municipal stormwater regulation. MS4 General Permit at 5–6; 33 U.S.C. § 1342.

2000 NPDES Waste Discharge Permit Requirements and Sanitary Sewer System

73. A sanitary sewer system is “A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.” 40 C.F.R. § 35.2005(b)(37).
74. A sanitary sewer system is different from a combined sewer, which is a sewer “designed as a sanitary sewer and a storm sewer.” 40 C.F.R. § 35.2005(b)(11).

75. On November 20, 2000, Oregon DEQ approved a NPDES Waste Discharge Permit for the City's wastewater collection, treatment, control, disposal, and discharge of adequately treated wastewaters only from authorized discharge points, and only in conformance with all requirements, limitations, and conditions set forth in the NPDES Waste Discharge Permit.
76. Pollutants referenced in the City's NPDES Waste Discharge Permit include *E. coli* bacteria, pH, carbonaceous biochemical oxygen demand (CBOD5), total suspended solids, total chlorine residual, toxics, ammonia-N, temperature, flow, and nutrients.
77. The City's NPDES Waste Discharge Permit authorizes only two (2) outfalls for wastewater treatment plant discharges (Outfalls # 001 and # 001A), and five (5) "emergency overflow" outfall locations for wastewater only: Bowman Park (#002) to the Willamette River; Maple Street (#003) to the Calapooia River; Montgomery (#004) to the Willamette River; MH #7 (#005) to the Willamette River; and Columbus LS (#006) to Oak Creek.
78. Under the City's NPDES Waste Discharge Permit, "[e]xcept as otherwise provided by law, no wastes shall be discharged from these [emergency overflow] outfalls and no activities shall be conducted which violate water quality standards" unless the cause of the discharge is due to specified storm events.
79. The City's NPDES Waste Discharge Permit Schedule F § D.5 "Reporting Requirements" states that "[t]he permittee shall report any noncompliance which may endanger health or the environment," and includes in the information which "shall" be reported within 24 hours, any "[v]iolation of maximum daily discharge limitation for any of the pollutants listed by the Director in this permit."

80. The City's NPDES Waste Discharge Permit contains "Standard Conditions," Schedule F, which state: "Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Oregon Revised Statutes (ORS) 468B.025 and is grounds for enforcement action; for permit termination, suspension, or modification; or for denial of a permit renewal application."
81. ORS 468B.025 is part of Oregon's Water Pollution Control laws, which the Oregon Legislature placed within ORS Title 36 (Public Health and Safety).
82. ORS 468B.025(1) states that unless a discharge is authorized by a permit, no person shall "cause pollution of any waters of the state," or "discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established for such waters by the Environmental Quality Commission." ORS 468B.025(1)(a), (b).
83. ORS 468B.025(2) further states that "[n]o person shall violate the conditions of any waste discharge permit issued under ORS 468B.050."
84. ORS 468B.025(3) further states that "[v]iolation of subsection (1) or (2) of this section is a public nuisance."
85. The City's NPDES Waste Discharge Permit is a waste discharge permit issued under ORS 468B.050.
86. The City's NPDES Waste Discharge Permit Schedule A "Waste Discharge Limitations not to be Exceeded" states that "[e]xcept as otherwise provided by law, no wastes shall be discharged from these [Outfalls 002 through 006 (Emergency Overflows)] outfalls and no activities shall be conducted which violate water quality standards as adopted in OAR 340-

41-445, unless the cause of the discharge is due to storm events as allowed under OAR 340-41-120(13) and (14)....”

87. Although OAR 340-041-445 and OAR 340-041-120 no longer exist in Oregon’s regulatory framework, the applicable provisions from the City’s NPDES Waste Discharge Permit state:

Emergency overflow discharges are prohibited ...from May 22 through October 14, except during a storm event greater than the one-in-ten-year, 24-hour duration storm or it’s [sic] equivalent. In the winter, emergency overflow discharges are allowed until January 1, 2010. After January 1, 2010, overflows are prohibited except during a storm event greater than a one-in-five-year, 24-hour storm event or its equivalent.

If an overflow occurs between May 22 and June 1, and if the permittee demonstrates to the Department’s satisfaction that no increase in risk to beneficial uses occurred because of the overflow, no violation shall be triggered if the storm associated with the overflow was greater than the one-in-five-year, 24-hour duration storm or its equivalent.

88. The City submitted SSO Reports for overflow events to the Oregon DEQ stating that the one-in-five-year, 24-hour rainfall for the sewerage system area is 2.69 inches.
89. The City’s July 22, 1980 NPDES Waste Discharge Permit contained a goal of eliminating raw sewage overflows by July 1, 1983. The City’s schedule to eliminate raw sewage overflows was modified on September 19, 1984.

FACTUAL BACKGROUND

Willamette River and Willamette Basin

90. The Willamette River is 187 miles long, running from its headwaters of Waldo Lake and the McKenzie River spring systems to the Columbia River in Portland.
91. The Willamette River is flanked by the forested slopes of the Coast and Cascade mountain ranges. The river and its tributaries support a wide variety of ecosystems and habitats,

including forested and depressional wetlands, riparian forests and shrublands, upland and wet prairies, chapparal, woodlands, and oak savannas.

92. The Willamette River Basin rivers, streams, and lakes support native fish and other wildlife, and support federally-listed as threatened under the Endangered Species Act native populations of Chinook salmon, coho, and steelhead trout. The Willamette River also has bull trout, rainbow and cutthroat trout, and other aquatic life culturally and economically significant to the basin.
93. These fish and wildlife depend on the presence and quality of specific physical and biological features of the river, including but not limited to water quality.
94. Oregon has statewide water quality criteria. See OAR 340-041-001 to 340-041-061.
95. In the Willamette River Basin, Oregon regulations proscribe Beneficial Uses to Be Protected (OAR 340-041-0340), Total Maximum Daily Loads (TMDLs) (OAR 340-041-0344), and Water Quality Standards and Policies (OAR 340-041-0345).
96. On the Willamette River, the designated beneficial uses vary depending on the section of the river and tributaries. The section of the Willamette River main stem where the City is located runs from the Coast Fork in Eugene to Salem (approximately River Mile 187 to River Mile 84). The designated uses of this section include: public domestic water supply and private domestic water supply (with adequate pretreatment and natural quality that meets drinking water standards); industrial water supply; irrigation; livestock watering; fish and aquatic life; wildlife and hunting; fishing; boating; water contact recreation; and aesthetic quality. OAR 340-041-0340 (Table 340A).

97. The main stem Willamette River's beneficial uses in the Coast Fork-Salem section include salmon and trout (all species) rearing and migration, and salmon and steelhead spawning from October 15 to May 15. OAR 340-041 Figures 0340A and 0340B.
98. Oregon's 303(d) list shows the Willamette River in and around the vicinity of the City as impaired.
99. In the River Mile 108-119 and River Mile 119-148 sections of the Willamette River, there are TMDLs for point sources and nonpoint sources of pollution. These TMDLs include: *Escherichia coli* (*E. coli*) (point and nonpoint source); turbidity (nonpoint source); biochemical oxygen demand ("BOD") (nonpoint source); and temperature (point and nonpoint source).
100. Discharging untreated waste and polluted stormwater into the Willamette River, including raw sewage, chemicals, toxins, pathogens, nutrients, heavy metals, oils, and sediment, can impair human health, aquatic environments and species that depend on these environments, and recreational uses of the Willamette River.
101. The City is located in the Upper Willamette subbasin, within the Oak Creek Watershed.
102. The City's Bryant Park is located at approximately River Mile 120; the City's Bowman Park is located at approximately River Mile 119, and the City's August 15, 2019 raw sewage discharge occurred at approximately River Mile 118 near Bowman Park.
103. The Clean Water Act requires states to monitor water pollution and report to the U.S. EPA every two years. EPA then issues Waterbody Quality Assessment Reports. Applicable U.S. EPA Waterbody Quality Assessment Reports for the Willamette River include the reports for River Mile 119.7 to River Mile 148.8 (approximately from the railway bridge crossing the Willamette River in Albany down to Norwood Island which is south of Corvallis)

(Waterbody ID 1227618456580_119.7_148.8), and for River Mile 119.7 to River Mile 108 (approximately from the railway bridge in Albany to Luckiamute Landing and the confluence of the Santiam River) (Waterbody ID 1227618456580_108_119.7).

104. Both EPA Water Quality Assessment Reports characterize the Willamette River in these areas as “good” for aesthetic value, but “impaired” for anadromous fish passage, resident fish and aquatic life, and water contact recreation. River Mile 108-119.8 is also impaired for aquatic life and salmonid fish spawning.
105. According to EPA Water Quality Assessment Reports, in the segments of the Willamette River near the City, pathogens cause fecal coliform impairment and affect the water contact recreation designated use; dissolved oxygen causes organic enrichment and oxygen depletion and affects salmonid fish spawning and anadromous fish passage; nutrients cause nutrient levels to increase and affect resident fish and aquatic life; sedimentation causes increased sediments and siltation and affects resident fish and aquatic life; and pH, acidity, caustic conditions cause pH impairments and affect anadromous fish passage. All of these impairments need a TMDL plan to restore impair waters.
106. Through the City’s unpermitted discharges from its old, antiquated waste discharge system, the City causes and contributes to the Willamette River’s water quality impairments.

The City’s Small Municipal Separate Storm Sewer System (MS4)

107. Stormwater runoff contains a wide variety of pollutants, including priority organics, toxic chemicals, oil and grease, heavy metals, nutrients, organic constituents, suspended solids, hydrocarbons, bacteria, pathogens, and other pollutants.

108. Stormwater runoff and surface water discharges from municipal separate storm sewers are a major cause of water quality impairment in rivers, lakes, estuaries and coastal areas across the United States and in Oregon.
109. Stormwater runoff can cause exceedances of water quality standards by contributing significant amounts of pollution to receiving waters, changing natural hydrologic patterns, accelerating stream flows, destroying aquatic habitat, and elevating pollutant concentrations and loadings.
110. To legally operate, MS4s must be permitted under EPA's NPDES stormwater program.
111. The City owns and operates a small MS4 pursuant to 40 C.F.R. §§ 122.26(b)(8) and (16) and its MS4 is located in an urbanized area as determined by the 2010 Decennial Census by the Bureau of the Census.
112. The City has approximately 128 miles of stormwater pipes, 67 miles of ditches, 2,200 manholes, and 4,180 catch basins. City of Albany Capital Improvement Program FY 2014–2015 through 2018–2019 at 39.
113. The City receives an average annual rainfall of approximately 42 inches.
114. The City's last master plan dates from 1988, does not include North Albany, "and does not reflect current stormwater management practices, the current level of development within the community, or current regulatory requirements."
115. The City does not have a Stormwater Management Program that contains the required programmatic and plan elements.
116. The City's streets, roofs, municipal buildings and infrastructure, and parking lots generate stormwater runoff containing pollutants. The City's stormwater collection system drains from a conveyance system (including roads with drainage systems, municipal streets, catch

basins, curbs, gutters, ditches, man-made channels, storm drains, or outfalls) which are designed or used for collecting, conveying, or transmitting stormwater.

117. The City is responsible for conducting maintenance on the roads, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, outfalls, and storm drains that drain into the City's stormwater collection system.
118. The City discharges stormwater with some combination of pollutants.
119. Oregon's MS4 General Permit is designed to require operators of municipal separate storm sewer systems like the City to reduce the discharge of pollutants from their municipal systems to the maximum extent practicable.
120. Oregon's MS4 General Permit includes the following requirements to address discharges from small municipal separate storm sewer systems, among others. Notably, operators like the City must:
 - a. Develop, implement, and enforce a stormwater management program;
 - b. Address stormwater runoff from new development and redevelopment;
 - c. Reduce pollutants in stormwater runoff from construction activities; and
 - d. Provide opportunities for the public to participate in the development, implementation, and review of the operator's stormwater management program.
121. Neither the City, nor any other entity on its behalf, has, as of the date of this Complaint, obtained coverage under the general or individual NPDES permitting programs for the City's municipal separate storm sewer system.
122. The City has sued the Oregon DEQ challenging the scope of the statewide general MS4 permit applicable to small municipalities.

The City's Waste Discharge and Sanitary Sewer System

123. The City's NPDES Waste Discharge Permit requires the City to be responsible for the operation and maintenance of wastewater collection, treatment, control, disposal, and to discharge adequately treated wastewaters only from authorized discharge points.
124. The City owns, operates, and maintains a sanitary sewer system designed to transport sewage.
125. The City's sanitary sewer system includes treated wastewater outfalls and emergency overflow outfalls which discharge to waters of the United States.
126. Sanitary sewer system overflows, releases, or discharges can occur due to factors including but not limited to blocked sewer lines, broken sewer lines, poor pipe connections, old, antiquated leaking pipes, stormwater infiltration, or groundwater inflow.
127. For sanitary sewer system overflow events, the City submits Sanitary Sewer Overflow ("SSO") Reports to the Oregon DEQ. The City has submitted SSO Reports for different events, including but not limited to emergency outfall overflows, old and/or abandoned pipe leaks, or manhole discharges.
128. The City's SSO Reports indicate that the City is experiencing repeated, ongoing, unpermitted discharges of raw sewage from old, antiquated, or abandoned pipes, and from its emergency overflow outfalls discharging pollutants to waters of the United States, including but not limited to the following events:

Examples of City SSO Report Discharges		
Approximate Date of Event	Site	Estimated Gallons
12/20/14	#004 Montgomery	243,000
1/17/15	#004 Montgomery	198,000
10/14/14	Near Bowman Park Overflow Site # 2	3,000
12/7/15	#004 Montgomery	27,090
12/17/15	#004 Montgomery	1,652,000
11/25/16	#004 Montgomery	495,000
2/5/17	#004 Montgomery	599,000
2/16/17	#004 Montgomery	407,000
2/21/17	#004 Montgomery	9,000
10/22/17	#004 Montgomery	89,430
12/18/18	#004 Montgomery	830,000
2/24/19	#004 Montgomery	264,000
4/7/19	#004 Montgomery	68,500
4/10/19	#004 Montgomery	5,088,000
8/15/19	Abandoned Sewer Line near Bowman Park	2,100
Total estimated gallons		9,732,020

129. Raw sewage contains pathogens including but not limited to bacteria (fecal coliform (including *E. coli*), salmonella, shigella, campylobacter); viruses (Hepatitis A, rotavirus, enteroviruses); protozoa (*Giardia lamblia*, *Cryptosporidium parvum*) and parasites (roundworm, hookworm, whipworm). Raw sewage also contains suspended solids, heavy metals, chemical, pharmaceuticals, and toxic constituents. Raw sewage can alter a water body's pH and oxygen levels. Raw sewage contains nutrients that may cause eutrophication of receiving water bodies and can stress biological, chemical, and physical attributes of aquatic ecosystems; it can also transmit disease to humans and animals.
130. The City's SSO Reports submitted to the Oregon DEQ confirm that the City rarely conducts or reports any water quality sampling for the City's SSO events.

131. The City's Public Works Department has stated that the City has "perpetually leaking mains, undersized mains, and mains that have reached the end of their expected life service" in the City's water system.
132. The City's Capital Improvement Program Fiscal Year 2019–2020 through 2023–2024 City Manager's Message stated that the City has wooden pipes that it only discovered in 2018.
133. Regarding the August 15, 2019 raw sewage discharge from an antiquated pipe to the Willamette River, the City stated: "This particular pipe we've known about. It's just old." Kyle Odegard, "Old Albany pipe dumps 2,100 gallons of sewage into Willamette." Albany Democrat-Herald (Aug. 15, 2019).
134. Upon information and belief, the August 15, 2019 discharges were commingled with pollutants, including but not limited to raw sewage.
135. The City's waste discharge system includes pipes that are more than 100 years old, wooden pipes, pipes that have reached the end of their expected life service, undersized pipes, perpetually leaking pipes, and "abandoned" pipes which leak.
136. The City has not mapped or inventoried all of its old, and/or abandoned, pipes in its waste discharge system.
137. The City has deferred for multiple years waste discharge sanitary sewer system maintenance and upgrades.
138. Upon information and belief, the City owns or has control over old and/or abandoned leaking pipes that have added, are adding, and will continue to add pollutants to waters of the United States from the City's sanitary sewer system and which are unpermitted under the City's NPDES Waste Discharge Permit.

139. Upon information and belief, the City has impermissibly discharged pollutants through its emergency outfalls, and from unauthorized sources, including during storm events which were not greater than a one-in-five-year, or one-in-ten year, 24 hour storm events or its equivalent. For example, for Outfall # 004 at Montgomery Street, the City's SSO Reports list rainfall in 24 hours prior to discharge events and "cumulative rainfall" for the 24 hours prior to and during discharge events. The SSO Reports show rainfall at levels less than and close to 2.69 inches, including:

Examples of City Rainfall Events Less Than 2.69 Inches		
Approximate Date of Event	Rainfall in 24 Hours Prior	Cumulative Rainfall in 24 Hours Prior & During Event
12/20/14	1.78"	2.61"
1/17/15	1.56"	1.96"
12/7/15	1.66"	1.74"
12/17/15	1.62"	3.66"
11/25/16	1.04"	2.43"
2/5/17	1.20"	2.82"
2/16/17	1.73"	2.74"
2/21/17	1.23"	1.40"
10/22/17	1.76"	2.47"
12/18/18	1.04"	2.05"
2/24/19	1.21"	1.77"
4/7/19	1.42"	1.65"
4/20/19	0.06"	0.38"

140. Additionally, the City's SSO Reports relied on several different rain stations at different locations as the baseline for its rainfall data for Outfall # 004 at Montgomery Street, even though Outfall # 004 did not change location.

Willamette Riverkeeper

141. Willamette Riverkeeper's First and Second Notice Letters stated that a lawsuit would be filed against the City if the violations of the Clean Water Act were not rectified. See Attachments A and B to this Complaint. Citizen suits to address violations of the Clean Water Act may only be filed 60 days after the mailing of such a notice. 33 U.S.C. § 1365(b).
142. Willamette Riverkeeper files this Complaint to protect its interests and the interests of its members and supporters in the Willamette River and the Basin, and to further Congress' goal of restoring and maintaining the integrity of our Nation's public waters.
143. Willamette Riverkeeper has been required to expend costs and to devote organizational resources to this litigation and to obtain the services of legal counsel and experts to prosecute this action.

CLAIMS FOR RELIEF

144. Willamette Riverkeeper hereby incorporates by reference all preceding paragraphs.
145. The Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States, unless the discharge is authorized by a General or Individual NPDES permit issued pursuant to 33 U.S.C. § 1342.
146. The City is operating a small municipal storm sewer system without authorization under a General or Individual NPDES Permit since at least December 21, 2010 (April 1st is "Census Day" and on December 21, 2010 the Census Bureau determined and delivered population counts and apportionment counts to the President), in contravention of 33 U.S.C. § 1342, and such action is presently ongoing and likely to continue unless the relief requested herein is granted.

147. The City has discharged pollutants in contravention of 33 U.S.C. § 1311 from the City's public waste discharge system, since at least October 2015, and such discharges are presently ongoing and likely to continue unless the relief requested herein is granted.
148. The City has violated its NPDES Waste Discharge Permit in contravention of 33 U.S.C. §§ 1311 and 1342 and such violations are presently ongoing and likely to continue unless the relief requested herein is granted.
149. Unless enjoined by the Court, the City will continue its violations of the Clean Water Act.
150. Under 33 U.S.C. § 1319(d) and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.2, 19.4, each separate violation of the Act subjects the City to a civil penalty of up to \$55,800 per day, per violation.

FIRST CLAIM FOR RELIEF

**Violation of the Clean Water Act
(Failure to Obtain and Comply with a
Small Municipal Separate Storm Sewer System ("Small MS4") Permit)**

151. Willamette Riverkeeper incorporates by reference all preceding paragraphs.
152. Operators of small municipal separate storm sewer systems located in an urbanized area as determined by the latest Decennial Census are automatically required to obtain coverage under a small municipal separate storm sewer system permit, 40 C.F.R. § 122.32(a), by availing themselves of one of the three alternatives for NPDES permit coverage set forth in 40 C.F.R. § 122.33.
153. The City has not availed itself of any of the three alternatives for NPDES permit coverage set forth in 40 C.F.R. § 122.33.

154. As an operator of a regulated small MS4, the City is required to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable as part of its stormwater management program. 40 C.F.R. § 122.32(a).
155. The City has failed and continues to fail to reduce the discharge of pollutants from its regulated MS4 system to the maximum extent practicable.
156. Oregon DEQ is the relevant Clean Water Act NPDES permitting authority for the City.
157. On November 30, 2018, the Oregon DEQ issued a General Permit for Stormwater Discharges from Small Municipal Storm Sewer Systems that applies to small municipal separate storm sewer systems in Oregon.
158. The City operates a small municipal separate storm sewer system located in Albany, Oregon, which is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. Thus, the City is required to obtain coverage under a small municipal separate storm sewer system permitting program. 40 C.F.R. § 122.33.
159. The individual NPDES permit option for the small municipal separate storm sewer system has been available to the City since at least December 21, 2010 and remains available as a way for the City to obtain NPDES permit coverage.
160. Each and every day since at least December 21, 2010, on which the City has discharged and continues to discharge stormwater from its municipal separate storm sewer system without authorization under a small municipal separate storm sewer system permit or without complying with the terms and conditions of such a permit is a separate and distinct violation of §§ 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342.

SECOND CLAIM FOR RELIEF

**Violation of the Clean Water Act
(Unauthorized Discharge of Pollutants into Waters of the United States
from the City's MS4 System)**

161. Willamette Riverkeeper incorporates by reference all preceding paragraphs.
162. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any "point source" to waters of the United States, except for discharges in compliance with an NPDES permit issued pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).
163. Operators of a small municipal separate storm sewer system in the State of Oregon are required to obtain Clean Water Act permit coverage under the small municipal separate storm sewer system permitting program.
164. In order to be authorized to discharge lawfully under the small municipal separate storm sewer system permit, operators of small municipal separate storm sewer systems must meet the requirements set forth in this permitting program.
165. These municipal separate storm sewer system permit requirements are designed to reduce the discharge of pollutants from the municipal separate storm sewer system to the maximum extent practicable.
166. The City is an operator of a small municipal separate storm sewer system in the State of Oregon that has not obtained coverage under a general or individual small municipal separate storm sewer system permit.
167. The City discharges stormwater containing pollutants from its municipal separate storm sewer system in violation of the Clean Water Act into the Willamette Rivers and its

tributaries, forks, and connected waters, which are waters of the United States within the Upper Willamette Watershed and the Oak Creek Subwatershed.

168. The City's discharges of stormwater from its municipal separate storm sewer system are discharges of pollutants within the meaning of Section 502(12) of the Clean Water Act, 33 U.S.C. § 1362(12), as well as "point source" discharges into waters of the United States.
169. The City's municipal separate storm sewer system discharges pollutants to waters of the United States in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).
170. Since at least December 21, 2010 the City has discharged and continues to discharge stormwater from its municipal separate storm sewer system without obtaining coverage under a valid NPDES small municipal separate storm sewer system permit as required by Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).
171. The City discharged and continues to discharge stormwater containing pollutants from its small municipal separate storm sewer system without permit coverage since at least December 21, 2010. Each discharge constitutes a distinct violation of Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342.

THIRD CLAIM FOR RELIEF

Violation of the Clean Water Act (Failure to Develop, Update, Evaluate, Implement, and Enforce a Stormwater Management Program as Required by EPA MS4 Regulations)

172. Willamette Riverkeeper incorporates by reference all preceding paragraphs.
173. Operators of regulated small municipal separate storm sewer systems are required to develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the small municipal separate storm sewer system to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water

quality requirements of the Clean Water Act, which plan must include the minimum control measures described in 40 C.F.R. § 122.34(b).

174. As an operator of a regulated small municipal separate storm sewer system, the City is required to develop, implement, and enforce a stormwater management program. 40 C.F.R. § 122.34(a).
175. The City has failed and continue to fail to develop and implement a compliant stormwater management program for the City of Albany, Oregon.
176. Each and every day since at least December 21, 2010, on which the City has failed and continue to fail to develop and fully implement a complete and accurate stormwater management program, and to keep such stormwater management program on file together with all other required documentation, is a separate and distinct violation of the small municipal separate storm sewer system permit and Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342.

FOURTH CLAIM FOR RELIEF

Violation of the Clean Water Act (Failure to Implement Required Minimum Control Measures)

177. Willamette Riverkeeper incorporates by reference all preceding paragraphs.
178. As a part a MS4 permit and as part of a stormwater management program, operators of regulated small MS4s are required by 40 C.F.R. § 122.34(b) to implement six minimum control measures:
 - a. Public education and outreach on stormwater impacts (including a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges and the steps that the public can take to reduce pollutants in stormwater runoff);

- b. Public involvement / participation (including providing opportunity for the public to participate in the development, implementation and review of the stormwater management program);
- c. Illicit discharge detection and elimination, in the form of a program to detect and eliminate illicit discharges, as defined by 40 C.F.R. § 122.26(b)(2);
- d. Construction site stormwater runoff control;
- e. Post-construction stormwater management in new development and redevelopment; and
- f. Pollution prevention / good housekeeping for municipal operations.
179. The City has failed and continues to fail to implement the minimum control measures as required under 40 C.F.R. § 122.34(b).
180. Each and every day since at least April 1, 2010, on which the City has failed to implement minimum control measures is a separate and distinct violation of the small MS4 permit and Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342.

FIFTH CLAIM FOR RELIEF

Violation of the Clean Water Act (Unauthorized Additions of Pollutants into Waters of the United States)

181. Willamette Riverkeeper incorporates by reference all preceding paragraphs.
182. Raw sewage is a “pollutant” and contains pollutant[s] within the meaning of the Clean Water Act, 33 U.S.C. § 1362(6), and its implementing regulations at 40 C.F.R § 122.2.
183. It is unlawful for the City to discharge pollutants from a point source into navigable waters unless the discharge is authorized by, and in compliance with, the terms and conditions of a NPDES permit. 33 U.S.C §§ 1311, 1342.

184. The City's NPDES Waste Discharge Permit only authorizes additions of pollutants to waters of the United States from authorized discharge points established in the City's NPDES Waste Discharge Permit, and only in conformance with all the requirements, standards, limitations, terms, and conditions set forth therein.
185. The City's old and/or abandoned leaking pipes are "point sources" within the meaning of the Clean Water Act, 33 U.S.C. § 1362(14).
186. On several occasions including but not limited to August 15, 2019 and October 14, 2015, and on a continuing and ongoing basis, the City has added pollutants into the Willamette River, or its tributaries, forks, and/or connected waters from the City's old and/or abandoned leaking pipes that are not permitted point sources. These additions were and are not authorized by the City's NPDES Waste Discharge Permit.
187. The City has discharged, and will continue to discharge in the future, pollutants from its old and/or abandoned leaking pipes, including but not limited to those referenced in the preceding paragraph.
188. On information and belief, Willamette Riverkeeper alleges that the City has taken insufficient remedial action to identify, stop, and prevent ongoing and future discharges from its old and/or abandoned leaking pipes, and these violations are therefore ongoing.
189. Each unauthorized discharge from the City's old and/or abandoned leaking pipes constitutes a separate violation of 33 U.S.C. § 1311(a).
190. These discharges have occurred since at least 2015, and upon information and belief, these discharges have occurred since before the City's NPDES Waste Discharge Permit was issued nearly twenty years ago, and at numerous times since the NPDES Waste Discharge Permit's issuance in 2000.

191. These discharges are continuous and ongoing and are likely to continue to occur until the City identifies, repairs, replaces, and/or properly operates and maintains its old and/or abandoned leaking pipes.

SIXTH CLAIM FOR RELIEF

Violation of the Clean Water Act (Discharges in Violation of the Terms and Conditions of the City's NPDES Waste Discharge Permit)

192. Willamette Riverkeeper incorporates by reference all preceding paragraphs.
193. It is unlawful for the City to discharge pollutants from a point source into navigable waters unless the discharge is authorized by a NPDES permit. 33 U.S.C §§ 1311, 1342.
194. The City's overflow outfalls are "point sources" within the meaning of the Clean Water Act, 33 U.S.C. § 1362(14).
195. The City's NPDES Waste Discharge Permit only authorizes discharges from specifically identified outfalls, and only in conformance with all the requirements, standards, limitations, terms, and conditions set forth therein.
196. In the winter, overflows are prohibited from the City's emergency outfalls except during a storm event greater than a one-in-five-year, 24-hour storm event or its equivalent.
197. On several occasions, including but not limited to December 20, 2014, January 17, 2015, December 7, 2015, December 17, 2015, November 25, 2016, February 5, 2017, February 16, 2017, February 21, 2017, October 22, 2017, December 18, 2018, February 24, 2019, April 7, 2019, and April 10, 2019 the City's waste discharge system had overflows from emergency outfall # 004 during winter storm events that did not exceed the one-in-five-year, 24-hour storm event.

198. The City's sewage overflows are themselves pollutants in violation of the NPDES Waste Discharge Permit, and contain and are commingled with other pollutants.
199. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. § 1362(6).
200. The City's outfall overflows violate the Clean Water Act because they were not authorized by the City's NPDES Waste Discharge Permit. 33 U.S.C. § 1311(a).
201. On information and belief, Willamette Riverkeeper alleges that the City has discharged, and will continue to discharge in the future, overflow containing and commingled with pollutants from its outfalls, inclusive of those referenced in paragraph 128.
202. On information and belief, Willamette Riverkeeper alleges that the City has taken insufficient remedial action to prevent future unpermitted discharges from its overflow outfalls, and these violations are therefore ongoing.
203. Each unauthorized discharge from the City's overflow outfalls constitutes a separate violation of 33 U.S.C. § 1311(a).
204. These discharges have occurred since at least 2015, and upon information and belief, these discharges have occurred since before the City's NPDES Waste Discharge Permit was issued nearly twenty years ago, and at numerous times since 2000.
205. These discharges are continuous and ongoing and are likely to continue to occur until the City is forced to repair, replace, and/or properly operate and maintain its overflow outfalls.

SEVENTH CLAIM FOR RELIEF

**Violation of the Clean Water Act
(Inadequate Operation and Maintenance of Waste Discharge System)**

206. Willamette Riverkeeper incorporates by reference all preceding paragraphs.
207. The City's NPDES Waste Discharge Permit Schedule F § B "Operation and Maintenance of Pollution Controls" requires that "[t]he permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit." NPDES Waste Discharge Permit at 15.
208. For decades, including the five years preceding the filing of this action, the City has failed to maintain all facilities and waste discharge systems under its ownership and control to achieve compliance with the effluent standards and limitations in its NPDES Waste Discharge Permit.
209. For decades, including the five years preceding the filing of this action, the City has failed to operate its waste discharge system to minimize, eliminate, or prevent unpermitted discharges and/or unauthorized overflows, resulting in millions of gallons of unpermitted discharges and/or unauthorized overflows to the Willamette River and its tributaries, forks, and/or connected waters.
210. The City's inadequate operation and maintenance of its waste discharge system, facilities, and equipment have caused, are causing, and will continue to cause discharges of raw

sewage, unauthorized overflows, blockages, flooding, inflow and infiltration problems, lapses or neglect of waste discharge system operation and maintenance, and inadequate sewer design.

211. The City has violated its NPDES Waste Discharge Permit and the Clean Water Act by inadequately operating and maintaining its waste discharge system.

EIGHTH CLAIM FOR RELIEF

Violation of the Clean Water Act (Failure to Collect, Analyze, and Report Water Quality Samples for Unpermitted Discharges, Unauthorized Overflows, and from the City's MS4 System)

212. Willamette Riverkeeper incorporates by reference all preceding paragraphs.
213. The City's NPDES Waste Discharge Permit Schedule F § D.5 "Reporting Requirements" states that "[t]he permittee shall report any noncompliance which may endanger health or the environment," and includes in the information which "shall" be reported within 24 hours, any "[v]iolation of maximum daily discharge limitation for any of the pollutants listed by the Director in this permit."
214. Pollutants referenced in the City's NPDES Waste Discharge Permit include *E. coli* bacteria, pH, carbonaceous biochemical oxygen demand (CBOD5), total suspended solids, total chlorine residual, toxics, ammonia-N, temperature, flow, and nutrients.
215. The discharge of pollutants in the City's NPDES Waste Discharge Permit can impact human health, aquatic life, and surface waters.
216. The City's SSO Reports submitted to the Oregon DEQ demonstrate that the City exceedingly rarely conducted or reported any water quality sampling for SSO events.

217. The City's SSO Reports indicate that for just one of the City's several outfall sites, it had nearly 10,000,000 gallons of unauthorized pollutants discharged to waters of the United States between December 20, 2014 and April 10, 2019.
218. The City's SSO Reports indicate that Defendants did not conduct bacteria sampling of nearly 10,000,000 gallons of discharges from its sewage system.
219. Defendants did not sample for bacteria for at least, but not limited to, eleven of the following thirteen overflow events:

Examples of City Overflow Events and Bacteria Sampling			
Approximate Date of Overflow	Site	Estimated Gallons	Bacteria Samples Taken
12/20/14	#004 Montgomery	243,000	Yes
1/17/15	#004 Montgomery	198,000	Yes
12/7/15	#004 Montgomery	27,090	No
12/17/15	#004 Montgomery	1,652,000	No
11/25/16	#004 Montgomery	495,000	No
2/5/17	#004 Montgomery	599,000	No
2/16/17	#004 Montgomery	407,000	No
2/21/17	#004 Montgomery	9,000	No
10/22/17	#004 Montgomery	89,430	No
12/18/18	#004 Montgomery	830,000	No
2/24/19	#004 Montgomery	264,000	No
4/7/19	#004 Montgomery	68,500	No
4/10/19	#004 Montgomery	5,088,000	No
Total estimated gallons		9,727,020	

220. It is the City's duty under the NPDES Waste Discharge Permit to report any noncompliance which may endanger health or the environment.
221. The City's failure to collect, analyze, or report any water quality samples for unpermitted discharges to waters of the United States means the City failed to report whether the

maximum daily discharge limitation for any of the pollutants was exceeded by nearly every unauthorized discharge event.

222. Operators of municipal separate storm sewer systems are required to comply with reporting and recordkeeping pursuant to 40 C.F.R. § 122.34(g)(2) and the applicable small municipal separate storm sewer system permit.
223. Reporting and recordkeeping requirements include: (1) keeping and making available to the public information used in the development of the stormwater management program, monitoring, reports, and data used in the development of the Notice of Intent for at least five years and (2) submitting an annual report to EPA.
224. The City has failed and continues to fail to carry out the required reporting and recordkeeping pursuant to 40 C.F.R. § 122.34(g)(2) and the applicable small municipal separate storm sewer system permit for the City.
225. The City has violated the Clean Water Act and NPDES Waste Discharge Permit by failing to collect, analyze, and report water quality data for its discharges, overflows, and its MS4 System.

PLAINTIFF'S PRAYER FOR RELIEF

226. Plaintiff Willamette Riverkeeper respectfully requests that this Court enter a judgment:
 - a. Declaring that Defendants violated, and continue to violate, the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342, for the unlawful additions and discharges of pollutants stemming from Defendants' unpermitted activities to waters of the United States;
 - b. Declaring that Defendants violated, and continue to violate, the Clean Water Act, 33 U.S.C. § 1342, for their failure to timely seek coverage under a general or

- ## COMPLAINT

Respectfully submitted this 13th day of October, 2020.

s/ Elisabeth A. Holmes

Elisabeth A. Holmes (OSB No. 120254)

Willamette Riverkeeper

P.O. Box 293

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s/ Bryan Telegin

s/ Zachary K. Griefen

Bryan Telegin (OSB No. 105253)

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* *Pro hac application to be filed promptly*

Attorneys for Plaintiff

Complaint Attachment A

First Notice Letter (August 27, 2019)



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Travis Williams
Riverkeeper &
Executive
Director

Board of
Directors

James
Tiefenthaler
President

Bart Rierson
Treasurer

Jessie Rohrig
Secretary

Scott
Youngblood

Belinda
Covarrubias

August 27, 2019

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

City of Albany
City Hall
333 Broadalbin Street, SW, 1st Floor
Albany, OR 97321

Peter Troedsson,
Individually and in his Capacity as City Manager
City of Albany
333 Broadalbin Street, SW, 1st Floor
Albany, OR 97321

Re: Notice of Intent to Sue Under § 505 for Violations of the Clean Water Act

Dear Sirs and Madams:

This letter is to provide you with notice that the nonprofit 501(c)(3) public interest organization Willamette Riverkeeper (the "Notifier" or "Willamette Riverkeeper") intends to file a citizen lawsuit against the City of Albany and its Manager, individually and in his official capacities (collectively "the Discharger" or "the City") who discharge bacteria into the Willamette River, a water of the United States, and who violate emergency overflow limitations. This lawsuit will allege violations by the City of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"); the Oregon Revised Statutes 486B *et seq.*; Oregon Administrative Rules including 340-41-007, 340-41-009, 340-41-340, 340-41-345; and the November 20, 2000 National Pollutant Discharge Elimination System ("NPDES") Waste Discharge Permit No. 102024 issued by the Oregon Department of Environmental Quality the City holds to operate its waste system (the "2000 NPDES Permit"). This lawsuit will be brought pursuant to 33 U.S.C. § 1365(a)(1)(A). Upon the expiration of the sixty (60) day statutory waiting period, Willamette Riverkeeper intends to file a civil action or actions in federal district court in the District of Oregon. The lawsuit will allege that since at least December 7, 2015, the City's past and continuing practices at its waste discharge facilities include numerous of violations of its 2000 NPDES Permit (*see* Figures 1-2, and Attachments 1-2), violations which have harmed and will continue to harm the Willamette River, and Willamette Riverkeeper and its members.

WILLAMETTE RIVER



Water Trail

COMPLAINT ATTACHMENT A
Page 1 of 14

EH0005534

I. Willamette Riverkeeper

Willamette Riverkeeper is a “citizen” within the meaning of 33 U.S.C. § 1365(g) because the organization, and its 2,500 members and supporters, have an interest which is adversely affected by the City’s violations of the Clean Water Act as alleged herein. Willamette Riverkeeper is a small 501(c)(3) not-for-profit organization with seven staff members. Willamette Riverkeeper was founded in 1996, and serves as the eyes, ears, and voice of the Willamette River. For more than 20 years, the organization’s sole mission is to protect and restore the Willamette River’s water quality and habitat and the resources of the Willamette River basin. Willamette Riverkeeper’s work focuses on the health of the river’s natural ecosystem, which is inseparable from the quality of life of the river’s community, including many members and supporters of Willamette Riverkeeper, who live, work, and recreate in the river (including the stretch of the river subject to this notice letter), its tributaries and side channels, and its surrounding watershed. Willamette Riverkeeper believes that a river with good water quality and abundant natural habitat, safe for fishing and swimming, is a basic public right. Willamette Riverkeeper engages in public outreach and education, advocacy with agencies, agency administrative processes, and where necessary, litigation.

Every year since 2001, Willamette Riverkeeper holds an 80 to 90 mile-5 day Willamette River trip along the National Water Trail called “Paddle Oregon.” Paddle Oregon open to Willamette Riverkeeper members and the public. Paddle Oregon is Willamette Riverkeeper’s largest and most challenging event to organize and coordinate, and hundreds of hours of staff time goes into planning each year’s event. During Paddle Oregon, hundreds of registered paddlers paddle with Willamette Riverkeeper 12 to 20 river miles each day, and camp at the river’s edge at pre-reserved public and private campgrounds. Paddle Oregon enables paddlers to connect with the river, its ecosystem, and its health. As it is a summertime trip, paddlers are encouraged to swim in the river to cool off and enjoy the river. In 2016, Willamette Riverkeeper won Travel Oregon’s Gene Leo Memorial Sustainable Tourism Award at the Oregon Travel and Tourism Industry Achievement Awards.

This year, Paddle Oregon took place August 12–16, 2019 and approximately 155 paddlers and 30 paddle leaders joined in Willamette Riverkeeper’s event. On August 14, 2019, Paddle Oregon paddlers camped overnight at a pre-reserved spot at the City of Albany’s Bryant Park. Paddle Oregon paddlers have camped at Bryant Park for several years. The morning of August 15, 2019, Paddle Oregon’s 185 paddlers left camp and began their scheduled 18-mile paddle down river to Independence, Oregon. Less than two miles into their August 15, 2019 paddle, Paddle Oregon paddlers went right through the City’s ongoing August 15, 2019 estimated 2,100 gallon raw sewage discharge to the Willamette River, from a location identified on the City’s August 20, 2019 Sanitary Sewer Overflow Report as “Abandoned sewer line near Bowman Park”, located near 1905 Linn Avenue.¹ Unaware of the raw sewage discharge, Paddle Oregon paddlers floated in boats and swam alongside their boats in the river during the discharge. Since the discharge, at least two Paddle Oregon paddlers have suffered infections they reasonably believe are related to the discharge.

COMPLAINT ATTACHMENT A

Page 2 of 14

¹ City of Albany Sanitary Sewer Overflow (SSO) Reporting Form to Oregon DEQ (signed August 20, 2019) (Attachment 1).

II. Dischargers

As of 2018, the City of Albany had a population of approximately 54,543 people. Since the 2000 NPDES Permit was issued nearly 20 years ago, the City's population has increased by approximately 35%, and the City is continuing to grow. The City has public water system servicing approximately 300 miles of pipes, more than 19,000 distribution lines; the pipes vary in age including some that are more than 100 years old.² The City of Albany owns and operates the City wastewater system, which is designed to collect and transmit wastewater to the Willamette River, the Calapooia River, and Oak Creek. Pursuant to the Clean Water Act and ORS 468B.050, on November 20, 2000 the Oregon DEQ issued a NPDES Waste Discharge Permit to the City for its waste discharge activities. The Permit was due to expire on October 31, 2005, but upon information and belief, has been administratively extended for nearly nineteen (19) years. The Manager of the City of Albany, Peter Troedsson, is the elected and/or appointed person with the responsibility to oversee management of the City. The notice letter notifies the City and its Manager in his official and individual capacities.

III. Violations of Federal Law

The Clean Water Act prohibits the discharge of any pollutant by any person, except as authorized by a NPDES permit. 33 U.S.C. § 1311. A NPDES permit may be issued to allow the owner or operator of a facility to discharge pollutants subject to certain limitations, such as monitoring, reporting, effluent standards, and other terms. *Id.* at § 1342(a); 40 C.F.R. Part 122. A discharge that is not explicitly authorized by a permit violates the Clean Water Act. The Clean Water Act allows any state to assume authority to administer its own permitting program in place of the federal program. *Id.* at § 1342(b)-(c). Oregon administers and issues NPDES permits to entities wishing to discharge pollutants. The 2000 NPDES Permit requires the City to operate and maintain its wastewater treatment facilities to prevent unauthorized discharges of untreated wastewater. Willamette Riverkeeper alleges that the City has had impermissible discharges, including discharges from "abandoned" pipes, and unpermitted Sanitary Sewer Overflows during the last five years, which do not cease to be ongoing, and for which there is a real likelihood of repetition. *See* Figures 1-2 below and Attachments 1, 2. Willamette Riverkeeper alleges that the City has failed to eliminate the problems causing unpermitted discharges from its wastewater system.

The lawsuit will allege that the City has violated, is violating, and will continue to violate the Clean Water Act as the discharge of pollutants is unpermitted, and potentially unpermittable. In particular, as set forth in the 2000 NPDES Permit, wastewater is supposed to be collected, transmitted to the City's Wastewater Treatment Facility, treated, and discharged into surface waters in accordance with specific effluent limitations. Also as set forth in the 2000 NPDES Permit, by January 1, 2010, the City's emergency overflow outfall system was required to have the capacity to handle overflows except during a storm event greater than a one-in-5-year, 24 hour storm event or its equivalent during the winter.

The City owns and operates the wastewater system, and maintains operation and control of all pipes, whether currently in use or "abandoned" or "undersized." As owners and operators, the City is a person subject to the requirements of the Clean Water Act. Sewer lines and emergency overflow pipes, whether active or abandoned or properly or improperly sized, are "point sources" under the Clean Water Act. 33 U.S.C. § 1362(14) ("any pipe"). The point sources here include, but are not limited to, each and every of the City's "abandoned" sewer

² *See, e.g.*, City of Albany Public Works Water System webpage available at <https://www.cityofalbany.net/city-data/128-public-works/water-svstem>.

pipes leaking or reasonably likely to leak pollutants, and the City's emergency overflow pipes that cannot handle emergency overflows.

IV. Pollutants Being Discharged

Willamette Riverkeeper alleges that the pollutants the City has discharged, is discharging, and will continue to discharge include, but are not limited to sewage, sewage sludge, and bacteria. The Clean Water Act's definition of "pollutant" specifically identifies "sewage" as a pollutant. 33 U.S.C. § 1362(6); *see also* ORS 468B.075(3) (Oregon Water Pollution Control). Willamette Riverkeeper also alleges that the City's emergency overflow discharges have exceeded, exceed, and will continue to exceed the one-in-5-year, 24 hour storm event threshold that has existed as a legal requirement since January 1, 2010 under the 2000 NPDES Permit and are impermissible.

Under the 2000 NPDES Permit, the City is required to self-report any discharges. All pollutants being discharged and overflow exceedances not set forth specifically in this letter are violations that are or should be known to the City and may be included in any future legal actions by Willamette Riverkeeper. Such pollutants may only be known to the City and eyewitnesses who are yet to be determined because such discharges have not been reported by the City. Since the City's entire files are not currently available to Willamette Riverkeeper, this information remains exclusively within the control of the City, and, consequently, Willamette Riverkeeper cannot be expected to provide all details of discharge times, locations, or amounts. The City's ongoing and continuous discharges and sanitary sewer overflows demonstrate that the City has not operated and maintained its wastewater collection system to prevent the unauthorized discharge of untreated wastewater in violation of the Clean Water Act.

V. Discharge Events Unlawful

The 2000 NPDES Permit does not authorize the City to discharge any untreated sewage from abandoned sewage pipes into waters of the United States and waters of the State from any other location other than those identified in the 2000 NPDES Permit. The 2000 NPDES Permit also does not authorize the City to discharge via its emergency overflow outfalls quantities in winter in excess of a one-in-5-year, 24-hour storm event or its equivalent. Figures 1 and 2 below, and Attachments 1, 2, demonstrate the City's unlawful discharge events.

Figure 1 – Abandoned Pipes.

Willamette Riverkeeper believes in good faith that the City has, is, and will continue to discharge pollutants from the City's "abandoned" pipes to waters of the U.S. The City admits to having "perpetually leaking" mains, undersized mains, to having "mains that have reached the end of their expected life service" in its water system,³ and wooden water pipes that it only discovered in 2018.⁴ Upon information and belief, the City has deferred for multiple years water

³ Id.

⁴ City of Albany Capital Improvement Program FY 2019-2020 through 2023-2024, City Manager's Message (available at https://www.cityofalbanv.net/images/stories/publicworks/cin/albanv_cin-2020-2024.pdf).

system maintenance and upgrades. In fact, the City admits that “This particular line we’ve known about. It’s just old.”⁵

All discharges resulting from old, “abandoned” leaking pipes are subject to action by Willamette Riverkeeper. Willamette Riverkeeper alleges the following violations of the 2000 NPDES Permit for “abandoned” pipes:

Date(s) of Discharge	Location	Quantity (gallons)	Waterbody Receiving Discharge	Bacteria
10/14/2015	Near Bowman Park Overflow Site # 002	3,000	Willamette River	No sampling
8/15/19	Abandoned sewer line near Bowman Park	2,100	Willamette River	Bacteria sampled (see Attachment 2)

Additionally, Willamette Riverkeeper alleges that other of the City’s abandoned, leaking pipes and undersized overflow pipes have caused, cause, and will continue to cause the discharge of pollutants to the Willamette River or its tributaries, forks, and/or connected waters. Information concerning specific dates, amounts, and exact or approximate locations, in addition to pipe location, status of “abandonment” or use, design, performance, from at least 2014 to the present is, or should be, in possession of the City.

Upon information and belief, on August 15, 2019 at approximately 8:00 a.m., City crews performing routine sewer system maintenance discovered a previously abandoned sewer line that was leaking raw sewage. Upon information and belief, the previously abandoned sewer line was leaking when it was discovered, and had been leaking raw sewage for an undetermined amount of time prior to its discovery. The City has stated it believes that April 2019 floods may have played a factor in damaging the abandoned sewer pipe, when the City’s sewage system was inundated with flood waters and discharged 5.01 million gallons of raw sewage into the Willamette River.⁶ Willamette Riverkeeper alleges that the August 15, 2019 discharge did not occur at any of the locations specifically authorized by the 2000 NPDES Permit.

Willamette Riverkeeper further alleges that the City violated the terms of the 2000 NPDES Permit for discharging impermissible quantities of bacteria in connection with the August 15, 2019 discharge. *See* Attachment 2. Sanitary sewer overflows can be caused by a failure to operate or maintain a system properly, equipment breaks or failures, blockages, or other system deficiencies. Untreated or partially treated wastewater and raw sewage can contain bacteria, viruses, and other pollutants that can affect public health. Sanitary sewer overflows can also contaminate water bodies and cause serious water quality problems. Bacteria samples are not to exceed 406 organisms per 100 ml. *See* 2000 NPDES Permit at Schedule A (Notes). If a single sample exceeds 406 organisms per 100 ml, then five consecutive re-samples may be taken at four hour intervals beginning with 28 hours after the original sample was taken. *Id.* The City’s first source sample of the August 15, 2019 discharge was at 12:22 p.m. on August 15, 2019, four hours after Willamette Riverkeeper initiated its paddle through the discharge, and bacteria sampled at > 2,420.0 MPN/100 ML. *See* Attachment 2. If the log mean of the five re-samples is

⁵ Kyle Odegard, “Old Albany pipe dumps 2,100 gallons of sewage into Willamette.” Albany Democrat-Herald (Aug. 15, 2019) (available at https://democratherald.com/news/local/old-albany-pipe-dumps-gallons-of-sewage-into-willamette/article_ab1e2f9b-ad6e-5d6e-851e-1a4298964d17.html).

⁶ *Id.*

less than or equal to 126 organisms per 100 ml, a violation shall not be triggered. *See* 2000 NPDES Permit at Schedule A (Notes). Willamette Riverkeeper alleges that the City violated the terms of the 2000 NPDES Permit for discharging impermissible quantities of bacteria in connection with the August 15, 2019 discharge event.

Figure 2 – Site # 004 Emergency Overflow Outfall.

Willamette Riverkeeper alleges that on the following dates, the City violated the Clean Water Act for failure to operate and maintain Emergency Overflow Outfall Site # 004 such that the City exceeded the terms of the 2000 NPDES Permit Schedule A(1)(B). The 2000 NPDES Permit required the City to operate and maintain Site # 004 to handle emergency overflows for a one-in-5-year, 24 hour storm event during the winter by January 1, 2010. Under ORS 468B.050(1)(c), a permittee may not “[i]ncrease in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.”

Willamette Riverkeeper alleges that the City’s winter storm event discharges were, are, and will reasonably continue to be beyond the limitations of the 2000 NPDES Permit. The general rule for the emergency overflow discharge outfalls is that “[e]xcept as otherwise provided by law, no wastes shall be discharged from these outfalls and no activities which violate water quality standards...”. 2000 NPDES Permit at Schedule A(1)(b). The 2000 NPDES Permit allowed winter emergency overflow discharges only until January 1, 2010. *See* Permit, Schedule A(1)(b). After January 1, 2010, “overflows are prohibited except during a storm event greater than a one-in-five-year, 24-hour storm event or its equivalent.” *Id.* The City’s winter emergency overflow discharges have violated, continue to violate, and are reasonably likely to continue to violate the 2000 NPDES Permit.

Date(s) of Discharge	Location	Quantity (gallons)	Waterbody Receiving Discharge	Bacteria
12/7/15	Site # 004	27,000	Willamette River	No sampling
12/17/15 – 12/18/15	Site # 004	1,652,000 ⁷	Willamette River	No sampling
2/5/17 – 2/6/15	Site # 004	599,000	Willamette River	No sampling
2/16/17	Site # 004	407,000	Willamette River	No sampling
2/21/17	Site # 004	9,000	Willamette River	No sampling
10/22/17	Site # 004	89,430	Willamette River	No sampling
12/18/17	Site # 004	830,000	Willamette River	No sampling

Upon information and belief, the City’s Sanitary Sewer Overflow and Emergency Overflow problems are widespread throughout the City, and are likely more pervasive and severe than what is conveyed in this notice letter. Even if the City complies with self-reporting requirement, the City does not evade the Clean Water Act’s prohibitions on unpermitted discharges. Reported, and unreported, unpermitted discharges violate the City’s NPDES permit because they indicate improper operation and maintenance of the sewer system and constitute unauthorized point source discharges to waters of the United States.

Upon information and belief, sanitary sewer systems that are efficiently maintained and operated do not cause ongoing and repeated spills of untreated sewage. The discharges identified herein have occurred, are occurring, and are reasonably likely to recur because the City has repeatedly failed to operate and maintain the Wastewater System in violation of its 2000 NPDES Permit. The City’s 2000 NPDES Permit, General Conditions (Schedule F) Section B(1) requires

⁷ Upon information and belief, the City did not notify the media of this 1.6M gallon discharge.

7

that the permittee "shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit." Furthermore, the 2000 NPDES Permit Schedule F contains a Duty to Mitigate, where "[t]he permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment." 2000 NPDES Permit, Schedule F, Section A(3). Willamette Riverkeeper alleges that for at least five years, and likely since at least January 1, 2010, the City has failed to operate, maintain, and/or mitigate its abandoned pipes and its "undersized" emergency overflow system and the its impacts, continues and will reasonably continue to do so.

The sanitary sewer overflows identified herein are point source discharges of pollutants into waters of the United States in violation of the 2000 NPDES Permit and in violation of effluent standards and limitations under the Clean Water Act. 33 U.S.C. § 1311(a). The discharges identified in Figures 1, 2 and Attachment 1, 2 are from point sources within the City's wastewater system which were not identified in an NPDES permit as authorized outfalls. None of these discharges were permitted or otherwise authorized by the Clean Water Act. As the owner of sewerage system, the City is responsible for controlling and treating the wastes the owner allows to be discharged into the system.

To the extent Willamette Riverkeeper later discovers alleged violations beyond those already identified in this notice letter that it previously could not identify due to the City's failure to accurately record discovery, identify, or report them, Willamette Riverkeeper reserves its right to sue for these violations under the Clean Water Act.⁸ Likewise, Willamette Riverkeeper reserves the right to amend this notice letter or serve a separate notice letter if additional data becomes available, and to pursue enforcement action against the City for any violations occurring after the time period encompassed by this letter.

VI. Waters Affected

The City's Permit authorizes limited discharges of treated wastewater to outfall location R.M. 118 (Outfall Nos. 001 and 001A), and emergency overflow discharges to the Willamette River at outfall locations at Bowman Park, Montgomery, and MH #7 (Outfall Nos. 002, 004, 005, respectively), to the Calapooia River at one outfall location at Maple Street (Outfall No. 003), and to Oak Creek at one outfall location at Columbus LS (Outfall No. 006).

The August 15, 2019 discharge to the Willamette River did not occur at any of the permitted locations, and thus is an unlawful discharge to waters of the U.S. and of the State. Discharges from the City have caused, are causing, and/or continue to cause failure of these water bodies to meet fecal coliform bacteria and other water quality standards, and have caused, are causing, and/or continue to cause to the impairment of these water bodies. The City continues to violate the Clean Water Act by discharging wastewater containing pollutants from point sources within its Wastewater System that are not identified in its NPDES permit as authorized outfalls. Since at least October 14, 2015 and upon reasonable belief continuing

⁸ Including but not limited to December 21, 2014 and December 23, 2014 exceedances of *E. Coli* limits. See Oregon Dept. of Env. Quality Warning Letter to City of Albany Reclamation Facility No. 2015-WL-575 (Feb. 13, 2015).

through the date of this Notice, other unpermitted discharges from the City's emergency overflow pipes to the Willamette River have occurred, and have a likelihood of continuing. As the City is continuing to discover leaking pipes and not resolving emergency overflow exceedances, the list of waters of the U.S. affected by the City's discharges likely is greater than those listed herein.

VII. History of Violations

Willamette Riverkeeper believes and alleges that the City's history of violations has continued since at least October 14, 2015, and many years prior to 2015, and that violations are presently ongoing and continuous. These violations have occurred, are occurring, and will continue to occur on regular basis (daily, weekly, or multiple times per month), during maintenance actions, or other actions where "abandoned" or unidentified antiquated pipes exist and have a connection with U.S. waters; as well as during emergency overflow events. All violations not set forth specifically in this letter, including specific dates and locations of such discharges, are violations that are or should be known to the City and may be included in any future legal action by Willamette Riverkeeper. All specific discharges discovered subsequent to the sending of this notice, of similar type and nature, whether occurring prior to or subsequent to this notice, shall be included in this case without need for further notice under 33 U.S.C. § 1365(b). Such discharges may only be known to the City and eyewitnesses who are yet to be determined because such discharges have not been, and are not, reported by the City.

VIII. Requested Relief

Absent cessation of the discharges by the City, Willamette Riverkeeper intends, at the close of the sixty (60) day period, to file a citizen lawsuit under § 505 of the Clean Water Act against the City, including its Manager, both individually and collectively, seeking injunctive relief, remedial relief, declaratory relief, and civil penalties for each day of each violation for each U.S. water body over the past five (5) years prior to the date of this Notice letter and sixty (60) days from the date of this notice relating to the illegal discharges through the date of this letter and all violations of § 301 of the Clean Water Act which occur subsequent to the date of this letter, plus costs, attorney and expert witness fees, and such other relief as may be appropriate. *See* 33 U.S.C. § 1319(d).

Violations occurring before November 2, 2015 are subject to a penalty of up to \$37,500 per violation. *See* 40 C.F.R. § 19.4 (Table 1). Violations occurring after November 2, 2015 are subject to escalating penalties of up to \$54,833 per violation assessed after February 6, 2019. *See* 40 C.F.R. § 19.4 (Table 2). For the violations identified in this letter, the total amount of potential penalties is well in excess of \$585,800. Lastly, Willamette Riverkeeper will seek to recover its litigation costs through Clean Water Act, 33 U.S.C. § 1365(d), including reasonable attorney and expert witness fees.

IX. The Notifier

The name, address, and telephone number of the person giving Notice of Intent to file a citizen lawsuit under the Clean Water Act is:

Travis Williams, Executive Director
Willamette Riverkeeper
403 SE Caruthers Street, Suite 101
Portland, Oregon 97214
Tel. (503) 223-6418

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The name, address, and phone number of the counsel for the Notifier is:

Elisabeth Holmes, Staff Attorney
 Willamette Riverkeeper
 P.O. Box 293
 Eugene, Oregon 97440
 Tel. (541) 870-7722
 eli@willametteriverkeeper.org

X. Conclusion

Willamette Riverkeeper welcomes a discussion regarding any facts you reasonably contend are inadequately set forth in this notice letter, and any defenses you contend may affect the claims set forth in this notice letter. During the sixty (60) day notice period, Willamette Riverkeeper's undersigned counsel will be available to discuss effective remedies and actions which will assure the City's future compliance with the Clean Water Act and all applicable state pollution control laws.

Sincerely,

s/ Elisabeth A. Holmes

Elisabeth A. Holmes
 Staff Attorney for Willamette Riverkeeper
 P.O. Box 293
 Eugene, Oregon 97440
 Tel. (541) 870-7722
 Email eli@willametteriverkeeper.org

Enclosures: Attachment 1 (City of Albany SSO Report, August 20, 2019)
 Attachment 2 (City of Albany SSO Sample results 8/15/2019 through 8/20)

cc:

<u>Via U.S. Certified Mail, Return Receipt Requested</u> Andrew R. Wheeler, Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW Mail Code 1101A Washington, D.C. 20460	<u>Via U.S. Mail</u> Chris Hladick, Regional Administrator U.S. EPA Region 10 1200 Sixth Ave. Seattle, WA 98101
<u>Via U.S. Certified Mail, Return Receipt Requested</u> Richard Whitman, Director Oregon Department of Environmental Quality 700 NE Multnomah Street, Suite 600 Portland, OR 97232-4100	<u>Via U.S. Mail</u> Sean M. Kidd, City Attorney City of Albany, Oregon c/o Delapoer Kidd P.C. 260 Ferry Street, SW, Suite 202 Albany, OR 97321
<u>Via U.S. Mail</u> City of Albany Members of City Council Individually and in their Capacities as Members of City Council 333 Broadalbin Street, SW, 1 st Floor Albany, OR 97321	

COMPLAINT
 ATTACHMENT A
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Attachment 1



Oregon Department of Environmental Quality

SSO Reporting Form



This information must be submitted within 5 days of becoming aware of the overflow.
Please complete online and print for signature. Be sure to fill out all fields.

FACILITY/CONTACT INFORMATION		
Name of Permittee: City of Albany		
Contact Name: David Gilbey		
Phone:	Email:	County:
541-497-6223	david.gilbey@cityofalbany.net	LINN
DEQ Permit # (see permit face page): 102024		DEQ File #: 1098
OERS Incident #: 2019-2126	Date Reported to OERS: 8/15/19 <input type="checkbox"/>	
Date Reported To DEQ: 8/15/19 <input type="checkbox"/>	Today's Date: 8/20/2019 <input type="checkbox"/>	
Date SSO Started (if known): 8/15/19 <input type="checkbox"/>	Time Started (if known): 08:00	
Date SSO Stopped (if known): 8/15/19 <input type="checkbox"/>	Time Stopped (if known): 14:00	
SSO Location: Other (explain): Abandoned sewer line near Bowman Park		
SSO Nearest Address: 1905 Linn Avenue NE		
City: Albany	Zip Code: 97321	
SSO Latitude (if known): N 44 deg/38 min/38.137 s	Longitude (if known): W 123 deg/5 min/1.337 sec	
Estimate of Quantity Overflowed: 2100	(Gallons) Link to estimation method	
Did the SSO discharge to surface water? YES		
Name of waterbody: Willamette River		
PUBLIC NOTIFICATION		
Notified downstream drinking water sources (List Below)?		
Name of drinking water facility: Wilsonville Water Treatment Plant		
Signs Posted? YES		
Media contacted? YES		
Who? Albany Democrat-Herald newspaper		
List any other steps taken to notify the public or state/federal agencies: News Release to local media, on City's website, Facebook, and Twitter accounts.		
CAUSES		
Cause or suspected cause of the overflow: Other (explain): <i>If needed, attach additional sheets</i> Abandoned sewer piping failure		
Rainfall in the 24 hours prior to SSO (for storm-related overflows): NA		(inches)
Source of rainfall data: <i>If needed, attach additional sheets</i>		

1-in-5 year 24 hour rainfall for the sewerage system area (if known): 2.69

(in/24hr)

EMERGENCY RESPONSE AND MITIGATION

List actions taken to stop and mitigate the impact of the SSO.

For overland flow:

Taped off affected area? N/A

Cleaned up affected area? N/A

For SSO to surface water:

Bacteria samples taken to confirm impact?

Follow up bacteria samples taken to confirm end of impact?

Describe monitoring and results:

Bacteria (E. coli) testing - see attached (all results in MPN/100mL)

See attached data for data available as of this report on 8/20/2019. Data will be amended on 8/21/2019 with additional data collected 8/20/2019

For SSOs that impact buildings:

Pumped out flooded buildings?

Disinfected?

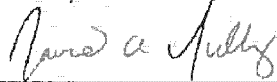
Other measures taken (describe):

Steps taken or planned to reduce, eliminate, and prevent the reoccurrence of the overflow and schedule for those steps:

City of Albany Wastewater Collections Crew re-sealed (plugged) the previously abandoned sewer piping with grout on 8/15/2019.

COMMENTS

I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHER AND EVALUATE THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.



August 20, 2019

Authorized Signature

Date

David Gilbey

541-497-6223

Name (print)

Phone Number

*You may attach additional information to this report before sending to DEQ as needed to explain the circumstances of the overflow. This information may include but is not limited to: maintenance records and bacteria monitoring results.

Upon completion, print out this form and send to the appropriate DEQ Address:

Portland-Permit Coordinator
700 NE Multnomah St., Suite 600
Portland, OR 97232

Salem-Permit Coordinator
4026 Fairview Industrial Dr. SE
Salem, OR 97302

Pendleton-Permit Coordinator
800 SE Emigrant, #330 Pendleton,
OR 97801

FOR DEQ PERSONNEL ONLY

☐ Pre-Enforcement Notice

☐ Warning Letter

No enforcement action was warranted because:

☐ The SSO was caused by unpreventable vandalism or similar force majeure; or

☐ The SSO is allowed as an exception to the permit as maintenance; or

☐ The cause of the current SSO was beyond reasonable control AND we do not expect the permittee to prevent similar SSOs in the future; or

☐ The SSO was 400 gallons or less, spilled to the ground and not reaching surface water; permittee properly reported, cleaned up, and took appropriate public notice measures; and the SSO was not part of a chronic problem.

COMMENTS

COMPLAINT ATTACHMENT A

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City of Albany Oregon-Sample results

	C	D	E
3	Sample date		MPN
4	8/15/2019 12:34:00 PM	Upstream overflow site	13
5	8/15/2019 12:22:00 PM	Source overflow site	>2420.0
6	8/15/2019 12:45:00 PM	Downstream overflow site	17.3
7			
8	8/16/2019 12:59:00 PM	Upstream overflow site	14.5
9	8/16/2019 12:48:00 PM	Source overflow site	47.1
10	8/16/2019 12:42:00 PM	Downstream overflow site	11
11	8/16/2019 12:43:00 PM	Downstream overflow site Duplicate	4.1
12			
13	8/17/2019 8:47:00 AM	Upstream overflow site	11
14	8/17/2019 8:57:00 AM	Source overflow site	21.3
15	8/17/2019 9:16:00 AM	Downstream overflow site	13.2
16	8/17/2019 8:48:00 AM	Upstream overflow site, duplicate	21.3
17			
18	8/19/2019 11:00:00 AM	Upstream overflow	13.4
19	8/19/2019 11:11:00 AM	Source overflow	20.3
20	8/19/2019 11:12:00 AM	Source duplicate	7.5
21	8/19/2019 11:20:00 AM	Downstream overflow	10.9
22			
23	08/20/2019	Upstream overflow	(available 8/21)
24	08/20/2019	Source overflow	(available 8/21)
25	08/20/2019	Duplicate	(available 8/21)
26	08/20/2019	Downstream overflow	(available 8/21)

Overflow event 8/15/2019

	C	D	E
3	Sample date		MPN/100ML
4	08/15/2019 12:34	Upstream overflow site	13
5	08/15/2019 12:22	Source overflow site	>2420.0
6	08/15/2019 12:45	Downstream overflow site	17.3
7			
8	08/16/2019 12:59	Upstream overflow site	14.5
9	08/16/2019 12:48	Source overflow site	47.1
10	08/16/2019 12:42	Downstream overflow site	11
11	08/16/2019 12:43	Downstream overflow site Duplicate	4.1
12			
13	08/17/2019 08:47	Upstream overflow site	11
14	08/17/2019 08:57	Source overflow site	21.3
15	08/17/2019 09:16	Downstream overflow site	13.2
16	08/17/2019 08:48	Upstream overflow site, duplicate	21.3
17			
18	08/19/2019 11:00	Upstream overflow	13.4
19	08/19/2019 11:11	Source overflow	20.3
20	08/19/2019 11:12	Source duplicate	7.5
21	08/19/2019 11:20	Downstream overflow	10.9
22			
23	08/20/2019 14:00	Upstream overflow	7.5
24	08/20/2019 14:00	Upstream Duplicate	5.2
25	08/20/2019 14:00	Source overflow	8.6
26	08/20/2019 14:00	Downstream overflow	6.3

SSO Sample results 8/15/2019 through 8/20

COMPLAINT ATTACHMENT A

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Complaint Attachment B

Second Notice Letter (January 31, 2020)



Willamette
RIVERKEEPER

403 SE Caruthers St., # 101
Portland, OR 97214
503.223.6418

January 31, 2020

Via Certified Mail, Return Receipt Requested

City of Albany
City Hall
333 Broadalbin Street, SW, 1st Floor
Albany, OR 97321

Peter Troedsson,
Individually and in his Capacity as City Manager
City of Albany
333 Broadalbin Street, SW, 1st Floor
Albany, OR 97321

Re: Notice of Intent to Sue under § 505 for Violations of the Clean Water Act's
Small Municipal Stormwater (MS4) Provisions

Dear Sirs and Madams:

This letter is to provide you with notice that the nonprofit 501(c)(3) public interest organization Willamette Riverkeeper (the "Notifier" or "Willamette Riverkeeper") intends to file a citizen lawsuit against the City of Albany and its Manager, individually and in his official capacity (collectively "the City"), who are required to operate the City's small municipal separate stormwater system ("MS4") under and in compliance with the Federal Water Pollution Control Act (the "Clean Water Act"), 33 U.S.C. §§ 1251-1387. Upon expiration of the sixty (60) day statutory waiting period, Willamette Riverkeeper intends to file a civil action in federal district court in the District of Oregon seeking appropriate declaratory and equitable relief, civil penalties, and other relief. The lawsuit will allege that since April 1, 2010, the City has been obligated to apply for, obtain, operate under, and comply with an MS4 permit, that the City has failed to do so, and that such violations of the Clean Water Act have harmed and will continue to harm the Willamette River, Willamette Riverkeeper and its members and supporters. This letter constitutes notice pursuant to Section 505(b) of the CWA, 33 U.S.C. § 1365(b), and 40 C.F.R. Part 135 (the "Notice").

Willamette Riverkeeper

Willamette Riverkeeper is a "citizen" within the meaning of 33 U.S.C. § 1365(g). Willamette Riverkeeper and its 2,500 members and thousands of supporters have an interest which is adversely affected by the City's violations of the Clean Water Act alleged herein. Willamette Riverkeeper is a small 501(c)(3) not-for-profit organization with eight staff members. Willamette Riverkeeper was founded in 1996, and serves as the eyes, ears, and voice of the Willamette River. For more than 20 years, the organization's sole mission has been to protect and restore the Willamette River's water quality and habitat and the resources of the Willamette River Basin. Willamette Riverkeeper's work focuses on the health of the river's natural ecosystem, which is inseparable from the quality of life of the river's community, including many members and supporters of Willamette Riverkeeper, who live, work, and recreate in the

river (including the stretches of the river subject to this notice letter), its tributaries and side channels, and its surrounding watershed. Willamette Riverkeeper believes that a river with good water quality and abundant natural habitat for wildlife – including threatened species, and that is safe for fishing and swimming, is a basic public right. Willamette Riverkeeper engages in public outreach and education, advocacy with agencies, agency administrative processes, and where necessary, litigation.

Person Responsible for Alleged Violations

The City of Albany and its agents with operational control over the City of Albany are the persons, as defined by § 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. The City has owned and operated the City's stormwater system since at least April 1, 2010. Accordingly, the City is responsible for managing the City's stormwater in compliance with the Clean Water Act.

Municipal Stormwater

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. 40 C.F.R. § 122.26(b)(13). Stormwater runoff picks up pollutants, including chemicals, toxins, pathogens, nutrients, heavy metals, oils, and sediment that harms waterways. 40 C.F.R. § 122.30. Stormwater runoff transported through MS4s and discharged into water bodies elevates the pollutant concentrations and loadings in these waters and changes their natural hydrologic patterns. *Id.* Stormwater runoff changes the properties of surface waters, which can cause or contribute to surface water quality standards. *See* OAR 340-041. EPA regulations confirm that “[s]torm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.” 40 C.F.R. § 122.30(c). The City's stormwater discharges shares the characteristics and impacts noted above.

The City of Albany is Required to Obtain and Comply With MS4 Permit Requirements

Since Congress passed the Clean Water Act in 1972, EPA has regulated stormwater. The purpose of EPA's stormwater program is to designate “additional sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources.” 40 C.F.R. § 122.30(b). In 1999, EPA finalized regulations for “Phase II” of its stormwater program (64 Fed. Reg. 68722 (Dec. 8, 1999)), requiring controls on stormwater discharges from small municipal stormwater systems. 40 C.F.R. § 122.34. EPA's Phase II program went into effect on February 7, 2000. 64 Fed. Reg. 68722. As of February 7, 2000, operators of regulated small MS4s “must seek coverage under a NPDES permit issued by your NPDES permitting authority.... [o]therwise your NPDES permitting authority is the EPA Regional Office.” Oregon DEQ is authorized by EPA to administer the MS4 permit program in Oregon. 33 U.S.C. § 1342(b) and OAR 468B.050(1). On November 30, 2018 the Oregon Department of Environmental Quality, Oregon Environmental Quality Commission (EQC)

issued a NPDES General Permit for Municipal Separate Storm Sewer Systems, Phase II General Permit ("Oregon MS4 General Permit"). Prior to the issuance of the Oregon MS4 General Permit on November 30, 2018, and since that time, Oregon has made individual MS4 Phase II permits an option for all permit registrants.¹

The provisions of the Oregon MS4 General Permit include reductions in the discharges of pollutants from stormwater, and that permit registrants "not caus[e] or contribut[e] to an excursion of the applicable water quality standards as established in OAR 340-041." *See* Oregon MS4 General Permit at 8.

The Oregon MS4 General Permit authorizes certain communities in Oregon to discharge municipal stormwater to surface waters of the state and to waters of the United States pursuant to Clean Water Act § 402, 33 U.S.C. § 1342. The Oregon MS4 General Permit lists the City of Albany as a "New Registrant" subject to regulation. *See* MS4 General Permit at 5-6. Without coverage under the Oregon MS4 General Permit or an individual NPDES permit, the City of Albany is illegally operating a municipal separate stormwater system without a NPDES permit.

"Small" municipal stormwater systems are those serving a population of 50,000 people or more as determined by census data and whether a municipality is located in an urbanized area. *See* EPA, Stormwater Phase II Final Rule Fact Sheet 2.1 (EPA 833-F-00-003) Jan. 2000 (rev. June 2012).² In accordance with 40 C.F.R. § 122.32(a), the City is located in an urbanized area as determined by the latest Decennial Census by the Bureau of Census. As of the 2010 Census, the City had a population of 50,158; 2018 population estimates put the City's population at 54,453.³

Phase II municipalities must discharge stormwater to surface waters only pursuant to the authorizations and limitations provided by a NPDES permit, and must develop a Stormwater Management Plan that includes six minimum control measures. 40 C.F.R. § 122.43(b)(1)-(6).⁴

As alleged above, the City qualified as an MS4 in 2010, when the City's population surpassed 50,000. At all times since April 1, 2010 the City has had a duty to seek an MS4 permit, but the City has repeatedly failed and refused to apply for, obtain, or comply with a NPDES stormwater MS4 permit, either an individual permit or the Oregon DEQ MS4 General Permit. In fact, in lieu of seeking coverage under an individual MS4 permit, or applying for coverage under the MS4 General Permit, the City sued Oregon DEQ.⁵ While the City may not wish to be

¹ *See, e.g.*, Oregon DEQ response to the City's comments on the MS4 General Permit, informing the public that "[i]f any permit registrant is unable to meet the terms and conditions of the general permit or does not wish to be regulated by this general permit, the permit registrant may apply for an individual permit in accordance with OAR 340-045-0030 or cease discharge." Oregon DEQ Response to Comment at 23-24 (Nov. 30, 2018) (<https://www.oregon.gov/deq/FilterPermitsDocs/ms4-rtc.pdf>).

² *See* <https://www3.epa.gov/npdes/pubs/fact2-1.pdf>

³ U.S. Census Bureau (<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>).

⁴ In summary, the six minimum control measures are: public education and outreach; public participation; illicit discharge detection and elimination; management of construction site runoff; management of post-construction site runoff; and good housekeeping in municipal operations. 40 C.F.R. § 122.34(b)(1)-(6).

⁵ *City of Albany v. Oregon Dept. of Env. Quality, et al.*, Linn Co. Docket No. 19-cv-04590 and Marion Co. Docket No. 19-cv-04553. The City has appealed the Circuit Court's November 6, 2019 Limited Judgment of Dismissal to the Oregon Court of Appeals (Docket No. A172799).

obligated under the Oregon DEQ MS4 General Permit, the City is still required to comply with federal law and has always had the option of applying for an individual MS4 permit. Willamette Riverkeeper contends that the City must either seek coverage under the MS4 General Permit or seek an individual MS4 Permit, and until the City obtains an MS4 permit, the City remains in violation of federal law.

Activities Alleged to be Violations

The City of Albany, Oregon is a regulated small municipal separate stormwater system ("MS4") pursuant to 40 C.F.R. § 122.26(b)(8) and § 122.26(b)(16). The City is subject to Oregon's MS4 permitting program, and is required to apply for, obtain, and comply with Oregon's MS4 General Permit or seek coverage under an individual permit. The City's unpermitted stormwater discharges to surface waters are unlawful without coverage under an individual or general NPDES permit.

The City constitutes a system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), which are (1) designed or used for collecting or conveying stormwater that is not a combined sewer or publicly owned treatment works, and (2) owned or operated by a public body created pursuant to state law and having jurisdictional authority over stormwater. The City owns and operates a stormwater system designed to collect and transmit and discharge stormwater to prevent flooding or unwanted drainage patterns. MS4s typically include miles of collection point miles of stormwater piping and ditches, and many outfalls to receiving waterbodies. Since the 1984 to 1989 timeframe, the City has operated separate stormwater and waste water systems,⁶ but as of 2010–2011 the City was still experiencing stormwater inflow into its sewer lines.⁷

The City's stormwater system consists of an estimated 200 miles of pipe and ditch, 175 known outfalls, approximately 4,300 catch basins or other types of inlets, and 150 publicly maintained stormwater quality facilities. The City provides public services to its residents, including collection, conveyance, and discharge of stormwater generated within the City. The City owns the collection and conveyance system used for this purpose. Stormwater is supposed to be collected and transmitted in accordance with the Oregon MS4 General Permit or an individual permit.

The City admits that "For most of Albany, stormwater flows to inlets, pipes, and ditches that carry it directly to local waterways *without any treatment at all*. Consequently, trash, debris, and harmful contaminants are also carried to the waterways"⁸ (emphasis original).

The City also admits that "[a]s the City grows, past and future development of land (in the form of roads, parking lots, buildings, etc.) results in more and more impervious surface area. These surfaces prevent water from soaking into the ground and cause a significant increase in the volume of water that runs off the land when it rains. This runoff also contains pollution which

⁶ City of Albany, Public Works Department, Capacity Management Operations and Maintenance Plan for the Wastewater Collection System ("CMOM") Plan at 8 (Oct. 2012).

⁷ *Id.* at 10.

⁸ City of Albany, "What is stormwater and why is it important?" See <https://www.cityofalbany.net/sw-what-is>.

affects the water quality of local waterways and ultimately the Calapooia and Willamette rivers. This pollution is the focus of state and federal stormwater regulations. In Albany, most stormwater flows from private property to a stormwater grate in the street where it drops into a pipe and is carried, untreated, to the nearest waterway. While the City's network of stormwater pipes is intended to be completely separate from the sanitary sewer system,"⁹ design and maintenance realities of the City's stormwater and sewer systems suggest some cross-connections may exist, or ancient pipe problems may contaminate stormwater discharges with sewage.

Since at least April 1, 2010, the City of Albany has repeatedly failed and refused to apply for, obtain, or comply with a NPDES stormwater MS4 permit.

Waters Affected

The City transports its stormwater runoff and discharges it into the "Waters of the United States" within the meaning of § 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7). The City's stormwater system discharges to the Willamette River, the Calapooia River, and smaller streams and creeks that empty into the Willamette River. The City is located on the threshold between Middle and Upper Willamette River.

The waters of the Willamette River are designated critical habitat for federally-listed species under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* Two ESA-listed species and their critical habitat occur in the mainstem of the Willamette River above Willamette Falls: Upper Willamette River (UWR) Chinook salmon and UWR steelhead. *See* Attachment 1 (NOAA Fisheries Critical Habitat maps for UW Chinook Salmon and UW Steelhead). Three additional ESA-listed species from the Lower Columbia River (LCR) region and their critical habitat also occur in the Willamette River below Willamette Falls: LCR Chinook salmon, LCR coho, and LCR steelhead. All five species are listed as "threatened" under the ESA. Individual fish from each of these species use critical habitat within the affected reaches to complete essential life history functions related to freshwater migration and rearing, and their ability to do so depends on the presence and quality of specific physical and biological features (PBFs) that include, but are not limited to, freedom from obstructions (which may include artificial noise or excessive sediment), floodplain connectivity, forage (adequate food quantity and quality), natural cover, and water quality.¹⁰

As the owner and operator of a regulated small MS4, the City is required to apply for, obtain, and comply with the requirements of a NPDES permit for small MS4s in order to discharge stormwater lawfully. Since the City has failed to take any of these steps, it is operating in violation of the Clean Water Act. Since at least April 1, 2010, the City of Albany has repeatedly failed and refused to apply for, obtain, or comply with a NPDES stormwater MS4 permit and is discharging stormwater to these waters without a permit.

⁹ City of Albany, Stormwater Utility. *See* <https://www.cityofalbany.net/sw-intro>.

¹⁰ *See* NOAA National Marine Fisheries Service Letter to the Oregon State Marine Board (Jan. 16, 2020).

Dates of Violations

Each day on which the City operates its stormwater system without NPDES permit coverage for a small MS4 and without stormwater management program for a small MS4 is separate and distinct violation of § 310(a) and § 402 of the Clean Water Act, 33 U.S.C. § 1311 and § 1342.

Since at least April 1, 2010, when the City surpassed the 50,000 population mark, the City has discharged stormwater from its small municipal separate stormwater system without a permit for a small MS4, in violation of § 310(a) of the Clean Water Act, 33 U.S.C. § 1311(a), as well as failed to apply for, obtain, and comply with the requirements of a NPDES permit for a small MS4, in violation of § 402 of the Clean Water Act, 33 U.S.C. § 1342 and 40 C.F.R. §§ 122.32–122.36. The City's discharges in violation of the Clean Water Act occurred, at a minimum, during every precipitation event—including snow and ice melt events since at least April 1, 2010, continue to this day, and will continue for so long as the City owns and operates its stormwater system without an MS4 permit.

More than 70 percent of the soil underlying the City is characterized as “poorly drained” with low rates of percolation. With average annual precipitation of 42 inches, much of the rain that falls on the City cannot be absorbed by the soil and must be collected and conveyed by the public stormwater system. The City admits that “[s]ignificant portions” of its stormwater system are “failing,” and “left unaddressed, more frequent street flooding, sink holes, and property damage should be anticipated.”¹¹

These violations are ongoing and continuous, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

Relief Requested

The City is liable for the above-described violations occurring prior to the date of this letter, and for every day these violations continue. Absent the City applying for, obtaining, and complying with an MS4 permit within the 60 day notice period, Willamette Riverkeeper intends at the close of the 60 day period to file a citizen lawsuit under § 505 of the Clean Water Act against the City, including its Manager both individually and collectively, for declaratory, injunctive, and remedial relief, and civil penalties for each day of each violation since the date the City was required to apply for and obtain an MS4 permit through the date of this letter, for all violations which occur subsequent to the date of this letter, plus costs, attorney and expert witness fees, and such other relief as may be appropriate. *See* 33 U.S.C. § 1319(d).

Pursuant to § 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§19.2, 19.4, each separate violation of the Act subjects the City to a penalty of up to \$53,484 per day for each violation that occurred after November 2, 2015 where penalties were assessed between January 15, 2018 and February 6, 2019, up to \$53,833 per day for each violation that occurred after November 2, 2015 where penalties were assessed after February 6, 2019, and up to \$55,800 per day for each violation

¹¹ City of Albany, “Operations and maintenance requirements.” See <https://www.cityofalbany.net/sw-operations>

where penalties were assessed on or after January 13, 2020. For the violations identified in this letter, including each and every day that the City has discharged without a required MS4 permit, Willamette Riverkeeper intends to seek the maximum possible penalty. Pending discovery, we see the City's total potential liability to be quite substantial. Lastly, Willamette Riverkeeper will seek to recover its litigation costs pursuant to 33 U.S.C. § 1365(d), including reasonable attorney and expert fees.

Notifier

The name, address, and telephone number of the person giving Notice of Intent to file a citizen lawsuit under the Clean Water Act is:

Travis Williams, Executive Director
Willamette Riverkeeper
403 SE Caruthers Street, Suite 101
Portland, Oregon 97214
Tel. (503) 223-6418

The names, addresses, and phone numbers of the counsel for the Notifier are:

Elisabeth A. Holmes, Staff Attorney
Willamette Riverkeeper
P.O. Box 293
Eugene, Oregon 97440
Tel. (541) 870-7722
Email: eli@willametteriverkeeper.org

Bryan Telegin
Bricklin & Newman, LLP
1424 4th Avenue, Suite 500
Seattle, WA 98101
Tel. (206) 264-8600
Email: telegin@bnd-law.com

Conclusion

During the 60 day notice period, Willamette Riverkeeper is willing to discuss effective remedies for the violations noted in this letter that may avoid further litigation. If you wish to pursue such discussions, please have your attorneys contact Elisabeth Holmes and Bryan Telegin within the next 20 days so that any negotiations may be completed before the end of the 60-day period. We do not intend to delay the filing of a complaint in federal court on this issue, or other pending issues we are discussing with you, if discussions are continuing at the conclusion of the 60 days.

Sincerely,

s/ Elisabeth A. Holmes

Elisabeth A. Holmes, Staff Attorney
Willamette Riverkeeper
P.O. Box 293
Eugene, Oregon 97440
Tel. (541) 870-7722
Email: eli@willametteriverkeeper.org

s/ Bryan Telegin

Bryan Telegin
Bricklin & Newman, LLP
1424 4th Avenue, Suite 500
Seattle, WA 98101
Tel. (206) 264-8600
Email: telegin@bnd-law.com

Enc. Attachment 1 (NOAA Fisheries Critical Habitat Maps)

Cc:

Via U.S. Certified Mail Return Receipt Requested

Andrew R. Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, D.C. 201460

Via U.S. Certified Mail Return Receipt Requested

Richard Whitman, Director
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

Via U.S. Mail

City of Albany Members of City Council
Individually and in their Capacities as Members of
City Council
333 Broadalbin Street, SW, 1st Floor
Albany, OR 97321

Courtesy Copies

Via Email and U.S. Mail

Nina Englander (nina.englander@doj.state.or.us)
Scott J. Kaplan (scott.kaplan@doj.state.or.us)
Oregon Department of Justice for
Oregon Department of Environmental Quality
1162 Court St. NE
Salem, OR 97301-4096

Via U.S. Mail

Chris Hladick, Regional Administrator
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

Via U.S. Mail

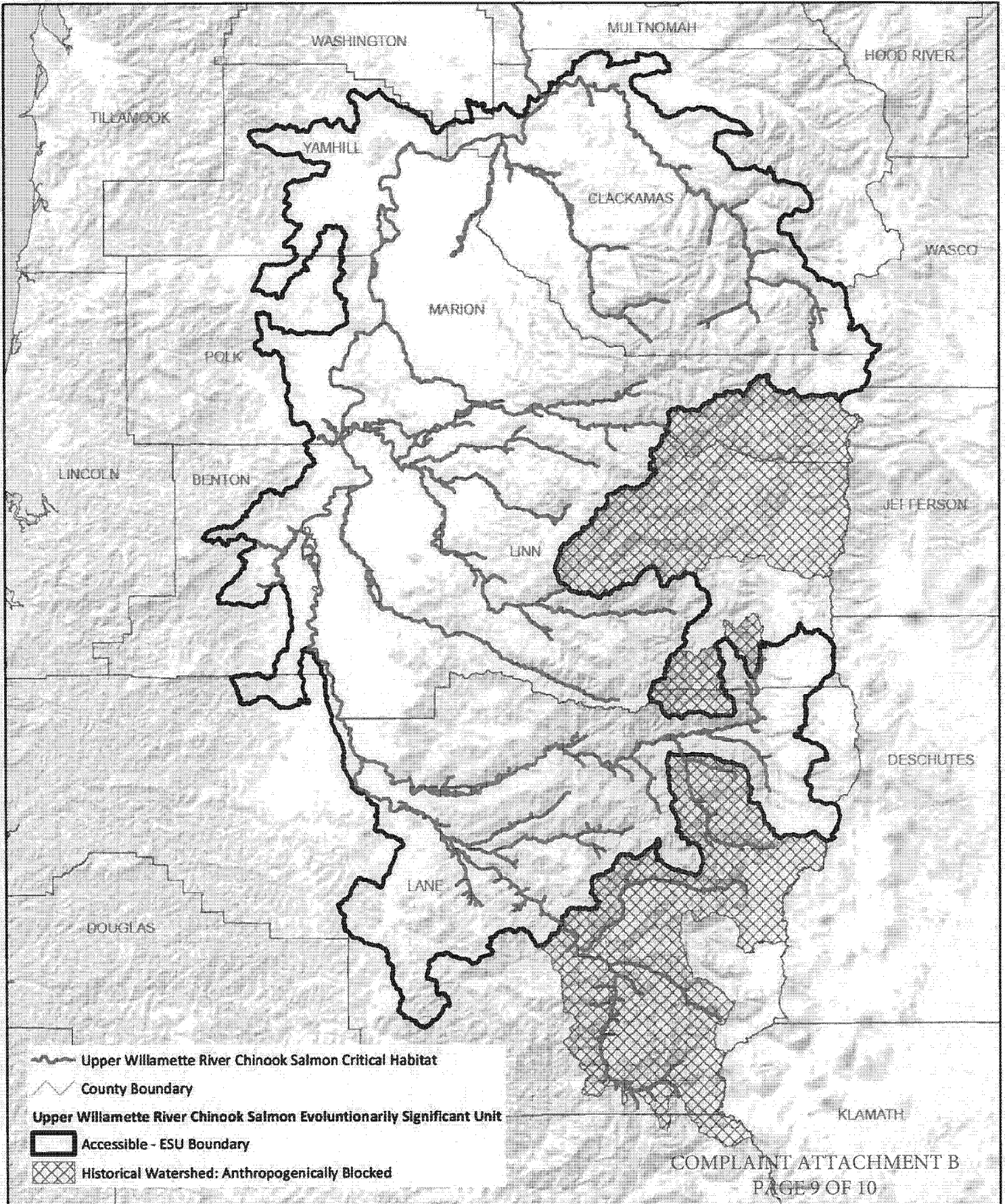
Sean M. Kidd, City Attorney
City of Albany, Oregon
c/o Delapoer Kidd, P.C.
260 Ferry Street, SW, Suite 202
Albany, OR 97321

Via Email and U.S. Mail

James Kincaid (jkincaid@cablehuston.com)
Kevin Kiely (gkkiely@cablehuston.com)
Laura Maffei (lmaffei@cablehuston.com)
Casey Nokes (cnokes@cablehuston.com)
Cable Huston
1455 SW Broadway, # 1500
Portland, OR 97201



Critical Habitat Upper Willamette River Chinook Salmon

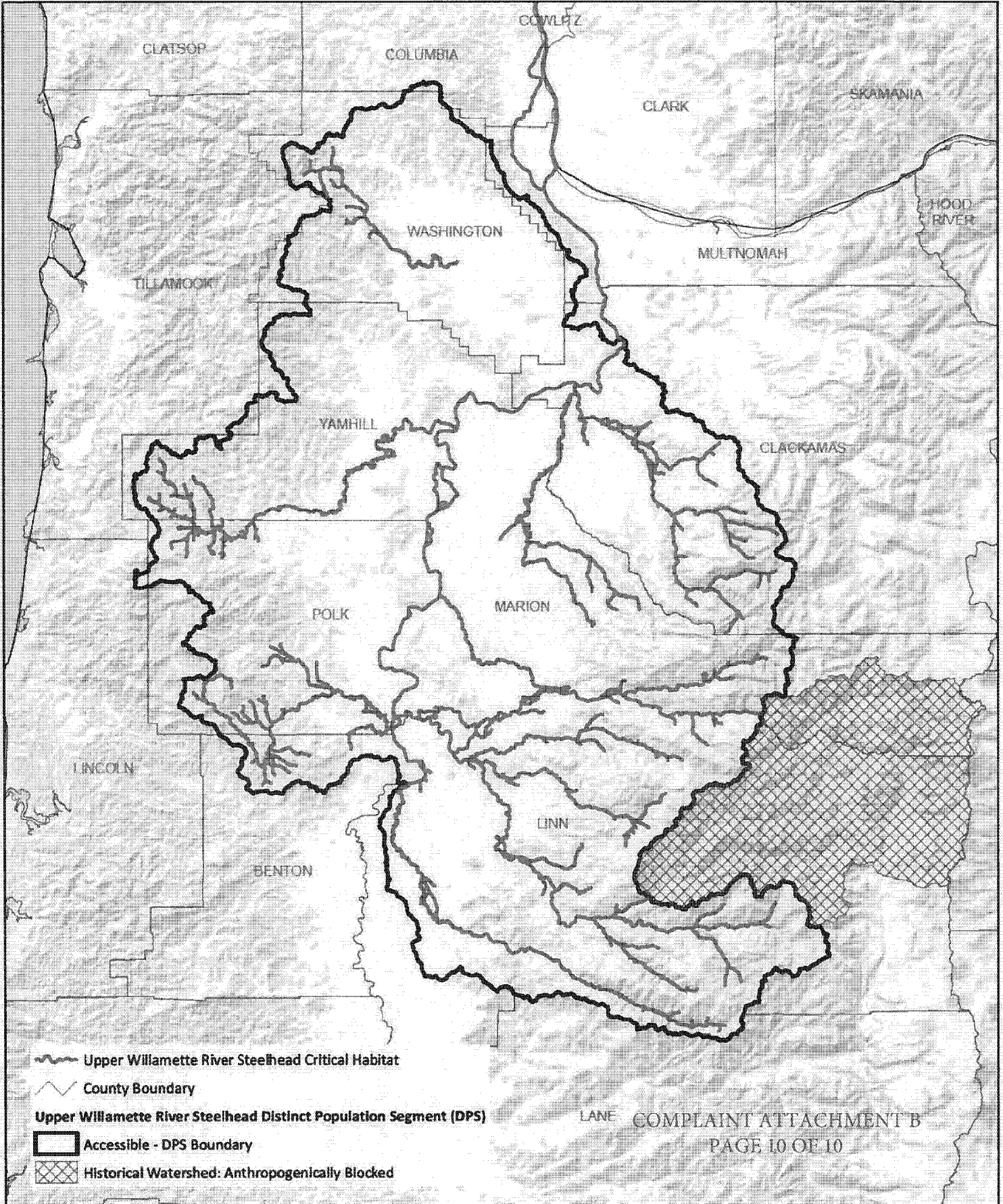


See Federal Register Notice for detailed description of critical habitat (70 FR 52630)

DOC-NOAA Fisheries-West Coast Region



Critical Habitat Upper Willamette River Steelhead



See Federal Register Notice for detailed description of critical habitat (70 FR 52630)
DOC-NOAA Fisheries-West Coast Region

WILLAMETTE RIVERKEEPER, Plaintiff

v.

**CITY OF ALBANY, OREGON; ALBANY CITY MANAGER PETER TROEDSSON,
INDIVIDUALLY AND IN HIS CAPACITY AS CITY MANAGER,
Defendants.**

40 C.F.R. 135.4(b) STATEMENT

Pursuant to 40 C.F.R. § 135.4(b), the enclosed copy of the filed, date-stamped Complaint, assigned civil action number 6:20-cv-01760-AA, was filed via CM/ECF with the District of Oregon, Eugene Division, on October 13, 2020.

Dated: October 27, 2020

s/ Elisabeth A. Holmes

Elisabeth A. Holmes (OSB # 120254)

Willamette Riverkeeper

P.O. Box 293

Eugene, Oregon 97440

Tel. (541) 870-7722

No facsimile

Email: eli@willametteriverkeeper.org

Counsel for Plaintiff Willamette Riverkeeper

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

WILLAMETTE RIVERKEEPER,

Case No. 6:20-cv-01760-AA

Plaintiff,

CASE MANAGEMENT ORDER

CITY OF ALBANY, OREGON, *et al.*,

Defendants.

AIKEN, Judge:

A. General Directions

All documents described below shall be filed using the District Court's CM/ECF system.

With questions, contact

Courtroom Deputy Cathy Kramer
(541) 431-4102
cathy_kramer@ord.uscourts.gov

B. Scheduling

Judge Aiken generally does not hold Rule 16 conferences. Soon after a case is filed, the Court will issue a scheduling order with deadlines for discovery, the Alternative Dispute Resolution report, and the Pretrial Order. If the parties wish to alter that schedule, they should confer and submit a joint proposed case schedule to the Court. If the parties cannot agree on a case schedule, they shall (1) request a telephonic status conference to settle the scheduling dispute and (2) submit a joint letter of no longer than three pages, filed at least two days before the telephonic status conference, setting out their respective positions.

Absent exigent circumstances, a motion to extend case deadlines, even when unopposed, should be received at least five days before the current deadline.

C. Discovery Disputes

Judge Aiken does not permit motions to compel without leave. If the parties need the Court's assistance resolving a discovery dispute, they should (1) request a telephonic status conference and (2) submit a joint letter of no longer than five pages, filed at least five days before the telephonic status conference, setting out their respective positions. Judge Aiken will order the filing a formal motion and briefs only if necessary following the telephonic status conference.

D. Trial

Absent unusual circumstances, Judge Aiken generally does not set dates for trial until discovery is complete and dispositive motions, if any, have been resolved. The parties are encouraged to contact the Court to schedule a telephonic scheduling conference either at the close of discovery (if no dispositive motions will be filed) or after a ruling on dispositive motions.

E. Settlement Conferences

At any point in the litigation, Judge Aiken is ready to schedule a settlement conference before a District of Oregon judge. The parties are encouraged to request such a conference as early in the process as they believe it would be helpful.

IT IS SO ORDERED.

DATED this 13th day of OCTOBER, 2020

/s/ Ann Aiken
ANN AIKEN
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

WILLAMETTE RIVERKEEPER

Plaintiff,

v.

CITY OF ALBANY, OREGON, et al.

Defendant.

Case No.: 6:20-cv-01760-AA

Civil Case Assignment Order

- 1. Presiding Judge:** The above referenced case has been filed in the Eugene Division of the U.S. District Court for the District of Oregon and assigned to:

Presiding Judge Hon. Ann Aiken
Presiding Judge's Suffix Code* AA

***These letters must follow the case number on all future filings.**

- 2. Courtroom Deputy Clerk:** Questions about the status or scheduling of this case should be directed to:

Cathy Kramer
Telephone: 541-431-4102
Email: cathy_kramer@ord.uscourts.gov

- 3. Case Administrator/Docket Clerk:** Questions about filings or docket entries in this case should be directed to:

Telephone: 541-431-4100

- 4. Place of Filing:** Any paper filings must be submitted to the Clerk of Court, Wayne L. Morse Courthouse, 405 East Eighth Ave., Eugene, OR, 97401. (See LR 3-1, LR 5-5.)

- 5. District Court Website:** Information about local rules of practice, CM/ECF electronic filing requirements, responsibility to redact personal identifiers from filings, and other related information can be found on the Court's website at ord.uscourts.gov.

- 6. Free Legal Assistance for Pro Se Litigants:** Litigants proceeding pro se (without a lawyer) may qualify for free legal assistance from the Oregon Chapter of the Federal Bar Association's Free Federal Law Clinic. To see if you qualify, apply at fedlawclinic.com.

- 7. Consent to a Magistrate Judge:** In accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, all United States Magistrate Judges in the District of Oregon are certified to exercise civil jurisdiction in assigned cases and, with the consent of the parties, enter final orders on dispositive motions, conduct trial, and enter final judgment, which may be appealed directly to the Ninth Circuit Court of Appeals.

Parties are encouraged to consent to the jurisdiction of a Magistrate Judge by signing and filing the (attached) Consent to Jurisdiction by a United States Magistrate Judge and Designation of the

Case File # 2019-00111 Document # 1 Filed 10/14/20 Page 1 of 1

Normal Appeal Route. There will be no adverse consequences if a party elects not to consent to a Magistrate Judge. A Magistrate Judge, however, may be able to resolve a case earlier as they are primarily assigned only to civil cases.

Additional information about United States Magistrate Judges in the District of Oregon is available on the Court's website.

DATED: October 14, 2020

MARY L. MORAN
Clerk of Court

by: /s/ B. Davies
B. Davies, Deputy Clerk

WILLAMETTE RIVERKEEPER
Plaintiff,

V.

Case 1:20-cv-00071 Document 1 Filed 10/14/20 Page 1 of 1

d. If counsel for all of the parties agree to forgo the initial disclosures required by Fed. R. Civ. P. 26(a)(1), they shall file with the Court the Fed. R. Civ. P. 26(a) Discovery Agreement form issued with this order (*See* LR 26-2). Whether or not the parties agree to forgo the initial disclosures, they may seek discovery once the initial conference of counsel for discovery planning contemplated by Fed. R. Civ. P. 26(f) has occurred. (*See* LR 26-1.)

4. Rule 16 Court Conference for Scheduling and Planning: Counsel for Plaintiff(s) and for Defendant(s) must, during or promptly after the conference of counsel referred to in section 3 above, contact the assigned judge's courtroom deputy clerk to schedule a Rule 16 Conference for scheduling and planning. (*See* LR 16-2.)

At the Rule 16 Conference, the parties must be prepared to discuss discovery, whether there is consent to a Magistrate Judge, and any scheduling or other issues, including any requested modifications to the initial scheduling order set forth in section 1 above, and possible submission of trial exhibits electronically (*See* LR 5-7(b)).

5. Service of this Order: Counsel for the Plaintiff (the "filing party") must serve this order and all attachments upon all other parties to the action. (In cases removed to this Court, the removing defendant is considered the "filing party.") (*See* LR 3-5.) A *pro se* filing party is required to serve this order and all attachments upon all other parties to the action.

DATED: October 14, 2020

MARY L. MORAN
Clerk of Court

by: /s/ B. Davies
B. Davies, Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

WILLAMETTE RIVERKEEPER

Plaintiff,

Case No.: 6:20-cv-01760-AA

v.

CITY OF ALBANY, OREGON, et al.

Defendant.

Fed. R. Civ. P. 26(a)(1) Discovery Agreement

Pursuant to LR 26-2, I state that the parties who have been served and who are not in default have agreed to forgo the disclosures required by Fed. R. Civ. P. 26(a)(1).

DATED: _____

Signature: _____

Name and OSB ID: _____

E-mail Address: _____

Firm Name: _____

Mailing Address: _____

City, State, Zip: _____

Parties Represented: _____

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

WILLAMETTE RIVERKEEPER

Case No.: 6:20-cv-01760-AA

Plaintiff,

v.

CITY OF ALBANY, OREGON, et al.

Defendant.

**Consent to Jurisdiction by a Magistrate Judge
and Designation of the Normal Appeal Route**

Pursuant to Fed. R. Civ. P. 73(b), as counsel for the party (parties) identified below, I consent to have a United States Magistrate Judge conduct any and all proceedings in this case, including entry of orders on dispositive motions, trial, and entry of final judgment. I understand that withholding consent will not result in any adverse consequences. Pursuant to Fed. R. Civ. P. 73(c), I agree that an appeal from a judgment entered at a Magistrate Judge's direction may be taken to the court of appeals as would any other appeal from a district court judgment.

DATED: _____

Signature: _____

Name and OSB ID: _____

E-mail Address: _____

Firm Name: _____

Mailing Address: _____

City, State, Zip: _____

Parties Represented: _____

U.S. District Court – Oregon
Civil Case Management Time Schedules

Local Rule	Event or Requirement	Time Frame	Comment
LR 16–1(d)	Discovery and Pretrial Scheduling Order (with attachments)	Issued by the Clerk's Office at new civil case initiation, along with the summonses	Required to be served on all parties by the filing party (<i>See</i> LR 3–5)
LR 26–1	Initial Conference for Discovery Planning	Within 30 days of a defendant filing a responsive pleading or a motion under Fed. R. Civ. P. 12	Held between the parties
LR 16–2	Rule 16 Conference	Scheduled by the assigned judge after the required LR 26–1 initial discovery planning conference	Affirmative duty on all counsel to contact the assigned judge's courtroom deputy (<i>See</i> LR 16–2(a))
LR 16–4(c)	ADR Conference Requirements	Within 120 days from the date the Discovery and Pretrial Scheduling Order is issued	Parties must confer with other attorneys and unrepresented parties to discuss ADR options
	Joint Status Report	Within 120 days from the date the Discovery and Pretrial Scheduling Order is issued	Required in cases assigned to Judge Jones
LR 16–2(e)	Completion of Discovery	Unless otherwise ordered by the Court, within 120 days from the date the Discovery and Pretrial Scheduling Order is issued	Discovery deadlines are set forth in the Discovery and Pretrial Scheduling Order
LR 16–4(d)	Joint ADR Report	Within 150 days from the date the Discovery and Pretrial Scheduling Order is issued	The parties must file a Joint ADR Report
LR 16–5	Joint Proposed Pretrial Order	Unless otherwise modified pursuant to LR 16–5(a), within 150 days from the date the Discovery and Pretrial Scheduling Order is issued	The Joint Proposed Pretrial Order filing deadline is established in the Discovery and Pretrial Scheduling Order
LR 16–4(f)(2)(B)	Notice to the Court that the Parties Are Unable to Select a Court-sponsored Mediator from the Court's list of mediators	Within fourteen (14) days after entry of a court order referring a case for Court-sponsored mediation	Plaintiff's attorney (or the <i>pro se</i> plaintiff) is responsible for notifying the assigned judge who will then designate a mediator
LR 16–4(h)(1)	Notification of Private ADR Results	Not later than seven (7) days after the conclusion of private ADR proceedings	Plaintiff's attorney (or the <i>pro se</i> plaintiff) is responsible for notifying the court
LR 16–4(h)(2)	Report of Court-sponsored Mediator	Not later than seven (7) days following the conclusion of the mediation if no settlement is achieved	Court-sponsored mediator is responsible for notifying the court

UNITED STATES DISTRICT COURT

for the

District of Oregon

Willamette Riverkeeper

Plaintiff(s)

V.

City of Albany, Oregon

Defendant(s)

Civil Action No. 6:20-cv-01760-AA

SUMMONS IN A CIVIL ACTION

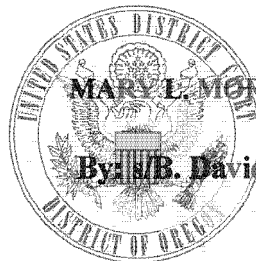
To: (Defendant's name and address) City of Albany, Oregon
City Hall
333 Broadalbin Street, SW, 1st Floor
Albany, OR 97321

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Elisabeth Holmes, Staff Attorney
Willamette Riverkeeper
P.O. Box 293
Eugene, Oregon 97440
Tel. (541) 870-7722 (No facsimile)
Email eli@willametteriverkeeper.org

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 10/14/2020

MARY L. MORAN, Clerk of Court

By: s/B. Davies, Deputy Clerk

Civil Action No. 6:20-cv-01760-AA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Oregon

Willamette Riverkeeper

Plaintiff(s)

v.

Albany City Manager Peter Troedsson, Individually
and in his Capacity as City Manager

Defendant(s)

Civil Action No. 6:20-cv-01760-AA

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Albany City Manager Peter Troedsson,
Individually and in his Capacity as City Manager
333 Broadalbin Street, SW, 1st Floor
Albany, OR 97321

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Elisabeth Holmes, Staff Attorney
Willamette Riverkeeper
P.O. Box 293
Eugene, Oregon 97440
Tel. (541) 870-7722 (No facsimile)
Email eli@willametteriverkeeper.org

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 10/14/2020



MARY E. MORAN, Clerk of Court

By: M.B. Davies, Deputy Clerk

Civil Action No. 6:20-cv-01760-AA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: